

# In Jail and Out of Options

An Examination of the Systemic Issues affecting the Housing and Treatment of  
Iowans with Mental Illness in County Jails



*"Jails are not hospitals, they are not designed as therapeutic environments, and they are not equipped to manage mental illness."<sup>2</sup>*

-U.S. District Court Judge Marsha J. Pechman

December 2016

**Disability Rights IOWA**  
Law Center for Protection and Advocacy™

**Disability Rights Iowa (DRI)** is the Congressionally-mandated protection and advocacy system for lowans with disabilities, including individuals with mental illness. DRI's mission is to protect the human and legal rights of lowans with disabilities and/or mental illness. DRI, as well as the other 56 protection and advocacy systems throughout the country, have the authority under federal law to investigate incidents of abuse and neglect of individuals with disabilities and to pursue legal, administrative, and other approaches to ensure the protection of individuals with disabilities. Protection and advocacy agencies are authorized to engage in a wide variety of activities to protect individuals with disabilities and/or mental illness, including monitoring facilities, conducting investigations, issuing public reports, engaging in litigation, administrative hearings and other dispute resolution activities, and educating policymakers. DRI's work to prepare, write, and distribute this report is funded under the Protection and Advocacy for Individuals with Mental Illness (PAIMI) grant, the Protection and Advocacy for Individuals with Developmental Disabilities (PADD) grant, and the Protection and Advocacy for Individual Rights (PAIR) grant.

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## Executive Summary

On any given day there are over 4,000 individuals residing in Iowa's jails, and approximately 49% of those individuals have a mental illness. Nationally, as large institutions housing thousands of mentally ill individuals have been shuttered, and states have failed to develop comprehensive adequate community care solutions, jails and prisons have expanded in response. This shift is known as "transinstitutionalization." Iowa currently has inadequate mental health services to serve the specific needs of Iowans with mental illness. Often, individuals with mental illness end up in jail for misdemeanors and nonviolent crimes of survival. Once the person is arrested and brought to jail, jails are responsible for the necessary medical and mental health treatment of their inmates.

Iowa has 97 county jails which grapple with providing this care, and all of the jails operate differently based on their physical facility, financial resources, and the local availability of mental health resources. Some jails, especially those located in rural areas, face significant barriers to providing safe housing and mental health treatment for inmates. These barriers are significant, yet they in no way absolve Iowa's jails from the basic legal standard of care. In recent years DRI has received hundreds of letters from inmates about their care and treatment in county jails, most commonly stating that they have been denied access to their mental health medications.

To better understand how Iowa's county jails were handling how to house and treat the large number of inmates with mental illness DRI visited 30 county jails and interviewed staff. We also obtained info from current and former inmates, and representatives of Mental Health and Disability Service (MHDS) Regions. During the interviews at each jail DRI asked about issues involving the housing and treatment of inmates with mental illness, the provision of medications and medical care, conditions of confinement, and access to mental health treatment in the local community.

Overall DRI discovered dozens of jails that evaluate their operations and work to identify solutions to ensure that inmates with mental illness are treated with dignity, receive appropriate mental health treatment and services, and ensure safety for all concerned. The majority of Sheriffs and Jail Administrators are doing excellent work by contracting with mental health providers, creating jail diversion programs, working with MHDS staff, and treating inmates with quality medical care and respect.

However, DRI also discovered some dangerous and discriminatory practices occurring at several jails throughout this project. Specifically, DRI found that:

A. Some county jails are ill equipped to house mentally ill individuals even temporarily. Several county jails in Iowa do not have the physical safety features or staffing levels to effectively serve inmates with mental illness.

B. Jail staff at some facilities lack the training to properly serve individuals with mental illness and typical incident response tools such as restraint, use of force, and isolation may escalate a situation or cause further significant and lasting mental health deterioration for the individual.

C. Some jails abruptly discontinue access to medications a person was taking in the community, whether the medication treats a heart condition, seizure condition, or mental illness, a practice that can result in death. Approximately 30% of county jails in Iowa do not provide mental health treatment beyond medication confirmation and management, indicating that hundreds of Iowans with mental illness who get incarcerated in these jails do not have access to basic mental health treatment.

D. Some jails use practices that result in medical decisions being made by non-physicians, or medical decisions being made for non-medical reasons such as the inmate's ability to pre-pay for the treatment.

E. In Iowa, diversion efforts are being led by individual counties stepping up to create jail diversion programs, multiple counties working together to pool resources, and MHDS Regions partnering to provide much needed funding and support. Jails that have most successfully treated inmates with mental illness are engaging with MHDS Regions and community mental health providers before, during, and after housing people with mental illness, but several Regions have no relationships with the County Jails in their areas.

Therefore, DRI makes the following recommendations:

1. Sheriffs and Jail Administrators must take steps to prepare to house inmates with serious mental illness by creating relationships with mental health providers before they are needed, and by ensuring there is continuity of access to mental health treatments and medications between the jail and the community for inmates with mental illness.
2. Mental Health and Disability Service Regions should reach out to local jails to identify how they can work together to ensure current inmates, and individuals who are being released from the jail have access to available mental health services and resources.
3. The state of Iowa must dedicate resources to increase the adequacy of the mental health service system by ensuring services and supports match the needs of Iowans with mental illness and by attracting qualified mental health professionals to work in all parts of our state.

In sum, DRI urges all stakeholders in Iowa's county jail and mental health service systems to work together to improve outcomes for Iowans with mental illness who have been, or are at risk of, entering the criminal justice system. Despite the logistical challenges, financial constraints, and other barriers, Iowa must move forward to prevent individuals with mental illness from ending up in our county jails. Although transinstitutionalization and the lack of an adequate community service network may have resulted in Iowa's county jails becoming de-facto mental health institutions, dedicating resources to building a robust and effective community mental health system, thoughtful and effective jail policies, and jail diversion efforts, can and must be supported to prevent serious harm to our community members with mental illness and stop the unnecessary criminalization and incarceration of Iowans with mental illness.

## **Part I: Transinstitutionalization of Individuals with Mental Illness from Hospitals to Jails — How Iowa's County Jails are Responding**

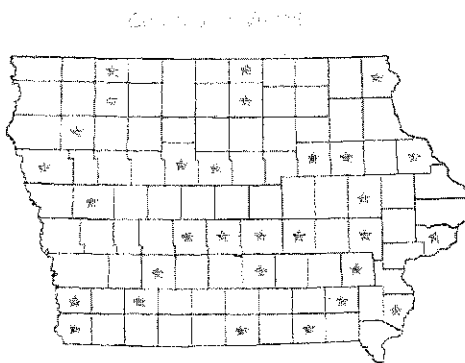
### **I. Introduction**

Inmates in local jails are over four times more likely to have a disability than the general population of people living in our communities.<sup>3</sup> Prisons house inmates in large facilities on a long-term basis when a person is convicted of a crime and is sentenced to serve more than one year of incarceration. County jails, on the other hand, are meant to house inmates on a temporary, short-term basis when they are awaiting trial or serving sentences for less than one year. As such, county jails face unique challenges in housing and providing treatment for a revolving door of individuals, who come to the jail with various medical needs and disabilities. The purpose of this report is to highlight this systemic problem, and expose how it affects people in our communities with disabilities and mental illness who end up in Iowa's county jails.

### **II. Project Description and Methodology**

This report contains three important parts. The information contained in this first part focuses on explaining why there has been a drastic increase in mentally ill inmates in county jails, and how Iowa's county jails are logistically and systemically responding to the increase of mentally ill inmates in the context of dramatic differences in resources and the changing community mental health system. Parts two and three of this publication will focus on the provision of mental health treatment and medications, and systemic solutions to these issues.

To get a comprehensive understanding of the issues involved when individuals with mental illness get entangled in the criminal justice system, and the resulting issues housing and treating these individuals in county jails, DRI staff traveled to thirty of Iowa's county jails. During those on-site visits DRI spoke with Sheriffs, Jail Administrators, Deputies, jail diversion staff, and medical personnel. DRI also received information from inmates, and spoke with representatives of the Mental Health and Disability Services (MHDS) Regions.



*Figure 1: Map showing locations of jails DRI visited as part of this project.*

Of the 97 existing county jails in Iowa, DRI chose thirty jails to visit based on a variety of factors to ensure that we heard from diverse perspectives from all over the state.<sup>4</sup> DRI visited at least one jail in every MHDS Region, and we selected an array of jails based on total county population, disability population, bed count at each jail, and age of each jail. Several jails were also selected based on media reports about successful diversion or treatment programs, and reports of public statements made by Sheriffs or jail staff about the need for better systemic solutions relating to their housing of mentally ill inmates.

During each jail visit, DRI interviewed jail staff members, and viewed the jail facilities. DRI also received considerable information from current and former inmates. Interview responses from all the visits were compiled to generate data, which form the basis of many of the findings discussed within this report.

### III. Discussion

#### A. Transinstitutionalization: Systemic Diversion of the Mentally Ill from Institutions to Incarceration Through the Path of Least Resistance.

*Transinstitutionalization:* A process whereby individuals, supposedly deinstitutionalized as a result of community care policies, in practice end up in different institutions, rather than their own homes. For example, the mentally ill who are discharged from, or no longer admitted to, mental hospitals are frequently found in prisons, boarding-houses, nursing-homes, and homes for the elderly.<sup>5</sup>

On any given day there are over 4,000 individuals residing in Iowa's county and local jails.<sup>6</sup> It is well established that the numbers of individuals with mental illness incarcerated in jails and prisons across the nation has increased dramatically in recent decades. As large institutions housing thousands of mentally ill individuals have been shuttered, and adequate community mental health services were not built, jails and prisons have expanded and the need for psychiatric services in correctional settings has followed.<sup>7</sup> "Before deinstitutionalization, jails and prisons held relatively few mentally ill inmates. This made for few forensic patients for state hospitals to treat. By 2014, a prison or jail held more individuals with serious mental illness than the largest remaining state psychiatric hospital in 44 states and the District of Columbia."<sup>8</sup>

"A lot of people in our custody are in for non-compliance, (not) taking their medication. They didn't do what the court ordered them to, the court has no place to put them, so they put them in our jail. Don't you find that disturbing that someone ends up in our jail just because somebody didn't take their meds? It's just not the place for them. So we're all sitting here not knowing where to place them, and (jail) is just not where they belong."

-Woodbury County Sheriff Dave Drew

In Iowa there are only 64 state hospital beds remaining to provide inpatient treatment to mentally ill Iowans, meaning that there are only two state run beds to serve every 100,000 Iowans.<sup>10</sup> Additionally, 60% of those beds are currently occupied by inmates from Iowa's prison system, indicating that in reality there are only 26 state beds available for over three million Iowans who are not currently incarcerated.<sup>11</sup> Continuing with the push to provide services in community settings rather than large, dated facilities, last year two of Iowa's four mental health institutes were closed. The closures were controversial as Iowa was already facing a shortage of mental health beds and services, however the public was assured that additional beds were being added to the remaining institutes to compensate for the closures.<sup>12</sup> Although the two mental health institutes closed as planned, additional beds were never added to the other institutes. As a result, including privately run beds, in total Iowa currently has 731 mental health inpatient beds to serve an estimated 123,000 mentally ill Iowans, a decrease of 85 beds since 2010.<sup>13</sup>

Health policy experts recommend a minimum of 40 to 60 inpatient beds per 100,000 population members.<sup>14</sup> This means that according to Iowa's current population of 3,123,899 we should have approximately 1250 to 1875 inpatient mental health beds to meet the needs of our residents with mental illness.<sup>15</sup> Accordingly, Iowa is "dead last" in the national ranking in available state mental health beds and critically deficient in the total number of available public and private mental health beds.<sup>16</sup>

Nationally it is estimated that 49% of individuals housed in prisons, and 60% of individuals housed in jails have current symptoms of mental illness, and approximately 17% have a serious mental illness.<sup>17</sup> In Iowa 47% of our prison inmate population has a mental illness, and approximately 28% have a

## CASE STUDY: ONE MAN'S REAL LIFE EXPERIENCE WITH IOWA'S MENTAL HEALTH AND CRIMINAL JUSTICE SYSTEM

Throughout this report we will illustrate important concepts by following the true story of "John Doe", who languished in a county jail for months before he was able to receive the mental health treatment he so desperately needed.

The experience of John Doe is one of the fundamental human costs of neglect, and our state failing to rise to meet the standard of communal support and care so central to our shared values. A longtime Iowa resident, John struggled to manage his schizophrenia and find stability. His entry point into the justice system was yet another avoidable consequence of Iowa's severely lacking mental health services. Due to the struggles he faced managing his mental illness, John had lived on the periphery of his community, with a support circle unsure how to secure for him the care and support he so clearly needed. Unable to stabilize without the help of mental health intervention, John's quality of life would fluctuate wildly, from temporary moments of stability to intermediate periods of homelessness.



serious mental illness.<sup>18</sup> Correspondingly, data from DRI's jail visits found that 49% of our county jail inmate population is mentally ill.

Often, individuals with mental illness end up in jail for "misdemeanors and crimes of survival" and they are often "minorities, almost always impoverished and disabled by their illness."<sup>19</sup> "Families and friends of the mentally ill routinely report that police officers, mental health workers and other families advise that the most reliable way for their loved one to get treatment is to be arrested."<sup>20</sup> "There's even jargon for when law enforcement resorts to arrest because treatment isn't available: "mercy bookings."<sup>21</sup>

In addition to basic supervision, prisons and jails are responsible for the necessary medical and mental health treatment of their inmates. In Iowa there are 97 county jails, ranging in size from 4 beds to over 1500 beds.<sup>22</sup> "County jails operate within budgets that limit facilities, staffing, and resources, and which vary widely from county to county."<sup>23</sup> Many of these jails are located in rural areas of Iowa, hours away from the accumulation of mental health resources located in larger cities. Still, the law requires the same basic level of treatment and care whether the jail is small and rural, or large and located in resource-rich areas.

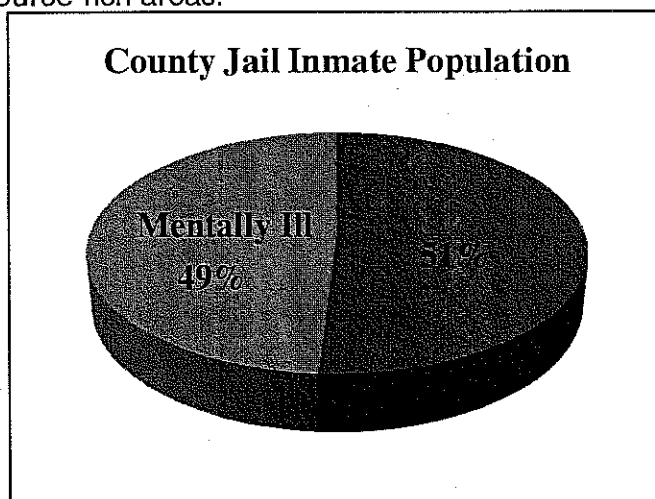


Figure 2: Pie chart showing that 49% of inmate's in Iowa's county jails have a mental illness, the remaining 51% are undiagnosed or their mental illness is unknown to jail staff.

## JOHN RE-ENTERS THE CRIMINAL JUSTICE SYSTEM

In 2010, in an attempt to finally get John help, a friend called the police when John urinated on his property, hoping at least through the court system his friend would find the treatment he had long needed. The charge resulted in a warrant, finally served in 2012 after John had walked away from an unlocked treatment facility where he was civilly committed.

For John, the court had become what it has for so many with significant mental health issues, a last resort after a long line of faltering supports and shamefully inadequate services. His disability, untreated and unaddressed ultimately was criminalized, and entered him into a system either unwilling or unable to attend to his basic human needs.

The issues faced by inmates with mental illness in our county jails, and the staff charged with their care, is amplified by the fact that length of stay of these inmates is markedly longer than others. Some estimates conclude that inmates with

mental illness stay in jail 2–5 times longer than other inmates.<sup>24</sup> The increased length of stay in jails for inmates with mental illness is also affected by significant wait times for competency evaluations. If a person with a mental illness is arrested and charged with a criminal offense, they may be ordered to undergo a competency evaluation to measure whether they are able to be tried for the offense charged. If such an evaluation has been ordered by a court, criminal proceedings are effectively put on hold until a determination has been made as to the person's competency. In Iowa and other states inmates "can spend months in jail awaiting evaluations."<sup>25</sup> In the case of inmates with misdemeanors or other low-level charges, this wait can exceed the maximum jail term sentence that could have been imposed for their original charge.

Recently a federal court ordered that competency evaluations must be completed within fourteen days of a court order in the state of Washington.<sup>26</sup> In other states, by law competency evaluations must be done in a timely fashion, often within days or weeks.<sup>27</sup> Iowa has no such time limit, or even suggestion of a "prompt" evaluation. Jail staff reported to DRI that inmates housed in their jails wait anywhere from days, to weeks, to months, even over a year, to receive a court ordered competency evaluation. During the wait, an inmate's mental health may deteriorate, as they languish in jail without having been convicted of a crime.

Suicide and incidents of self-harm are also of major concern for inmates with mental illness. In Iowa at least 15 county jail inmates have committed suicide in the last three years.<sup>28</sup> "Suicide is the leading cause of death in jails, yet suicide and suicide attempts represent a small share of the acts of self-harm inmates inflict. Self-mutilation is commonplace, especially in solitary confinement, where mentally ill prisoners make up most of the population."<sup>29</sup>

"I need to see a mental health doctor. I have bad days where I want to hurt myself."

— an inmate in a county jail in Iowa

"I am having a lot of problems in this jail hearing voices, doing things that people here find abnormal."

— an inmate in a county jail in Iowa

## B. Iowa: Housing and Treatment of Inmates with Mental Illness in our County Jails.



Figure 3: The Polk County Jail, pictured, houses up to 1584 inmates, making it one of the largest mental health treatment providers in the state of Iowa.

County jails are routinely in the predicament of providing housing and treatment to individuals with mental illness when jail facilities are not designed to house that population, and jail staff are not typically selected or trained to manage individuals with associated behavior issues. Indeed, correctional agencies struggle to adjust from their intended structure and purpose, to accommodate housing mentally ill individuals—a process that can be naturally at odds and very logistically challenging while maintaining safety and security.

### i. Identification and Classification

Early identification of an individual's mental illness to initiate or maintain treatment that will prevent decompensation is key to the safe housing of an inmate. Each jail evaluates and classifies inmates differently. Some use intake software with questions generated by the basic requirements set by the Iowa Administrative Code.<sup>31</sup> Other jails supplement with questions of their own design, or with a branded mental health screening tool such as the Brief Jail Mental Health Screen.<sup>32</sup> Most jails do not automatically classify or house those with mental illness any differently than other inmates. Typically, if an inmate shows signs of self-harm or suicidal ideation, or atypical behavior, most jails will temporarily house that person in a holding or

### JOHN ENTERS JAIL

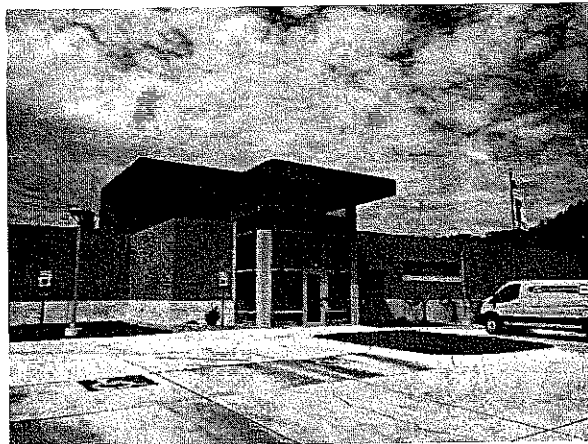
John entered a county jail in 2012. From the beginning, it was apparent to jail staff that John had significant mental health issues that fell far outside the range of what the jail was equipped to address. John had angry outbursts and remained naked in his cell most days. From the onset jail staff attempted to identify possible placements for John. Jail staff candidly reported John's behaviors and their concerns to the court in an attempt to get John into a treatment facility. However, when approached, local hospitals and inpatient psychiatric facilities denied him placement. Although the jail provided outpatient level mental healthcare in the jail, attempts to provide medication alone were insufficient. Lacking the staff or environment to treat him effectively, but failing to secure an alternative, John deteriorated daily in the jail.

observation cell for increased supervision often known as Mental Health Observation (MHO) or Suicide Self-Harm Prevention (SSIP).

## ii. Physical Plant Issues



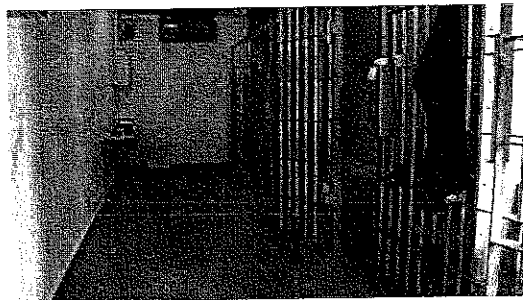
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*Figures 4-5: The old Fremont County Jail (left) and the new Fremont County Jail (right)*

County jail structures vary widely across the state, and the physical characteristics and condition of these jails are determinative of several issues that affect the experience of inmates, and the ability of correctional officers to house inmates safely. Many counties have recently built or are in the process of building new jails to replace facilities that have been outgrown. Needless to say, the variations of experience of inmates in these different jails are notable and the environments of these jails are drastically different. The average county jail in Iowa is 32 years old and houses up to 71 inmates.<sup>35</sup>



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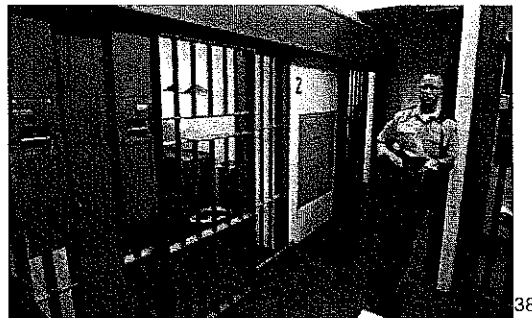


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*Figures 6-7: Photos of living units in an older jail (left) and a newer jail (right)*

Older jails can pose more risks by design. Although most modern facilities are built with supervision and secure materials in mind, old jails pose more opportunities for harm. For example, older jails may contain metal bar doors or walls made of crumbling materials, and by design provide less effective supervision based on linear layouts. Some jails in Iowa are over 100 years old and are still functioning. The Fremont County Sheriff's Office used to operate one such facility in southwest Iowa that was built in 1889. After

successfully advocating for a new jail, the Sheriff opened a modern new facility last summer. The environmental conditions, and safety and security benefits of the new facility are immeasurable as compared to the former jail site. Not all Sheriffs operating aged facilities have been so lucky. Some jails have been forced to send significant numbers of inmates to other counties for housing as a result of lack of space. Smaller, more rural jails also tend to rely on good relationships with other counties to place inmates with significant behavior or security issues in larger or newer jails that have the staff and tools to house that person. This comes at significant expense to the originating jail.



*Figure 8: Staff at the Johnson County jail are pictured during a 2014 public tour of the jail given to encourage support for the building of a new law enforcement center.*

Many Sheriffs advocate for replacing old jails that have been outgrown, and many are successful, however there are still a few counties whose citizens have voted to block these efforts time and again.<sup>39</sup> Some jails are so overcrowded, or have such structural deficiencies from age, that they are operating under variances issued by the State Jail Inspector.<sup>40</sup> Eventually these variances will end and the jails will have to close if new alternatives are not established.

### iii. Rural Jails Access Fewer Resources Inherently

Alarmingly, 87% of jail staff interviewed indicated that their local communities lacked adequate mental health resources for residents. "Mental health professionals are in dire shortage. Of the nation's 3,100 counties, 55% have no practicing psychiatrists, psychologists or social workers."<sup>41</sup> Jails located in rural areas and in counties with low populations have limited access to community mental health resources for their inmates. For example, one jail DRI visited had no mental health resources at all in the county except for the services provided within their jail. Although provision of mental health treatment inside jails is a much needed resource, confinement in a jail should never be the only way a resident can receive treatment locally. Often, those that need mental health treatment services do not have access to consistent transportation to existing providers in other counties. Such deficiencies in community mental health resources greatly increase the chance of an individual with mental illness returning to jail.

#### iv. Understaffed Jails Pose Safety Risks for Vulnerable Inmates

Consistently, jail staff who were interviewed self-identified the safety risks of housing mentally ill inmates in their facilities and acknowledged the need for additional staff, housing options, or security measures in relation to this issue. Jails are often tightly budgeted and restricted in their abilities to increase staff numbers or hours. Adequate staff numbers are essential to be able to supervise inmates and respond to situations that occur. For example, a jail which only has one person staffed to operate a master control room and view security cameras, who is also responsible for answering phones and processing mail is not able to identify and respond to medical emergencies, altercations, or other inmate distress as quickly as those which have adequate supporting staff or multiple persons assigned to supervise.

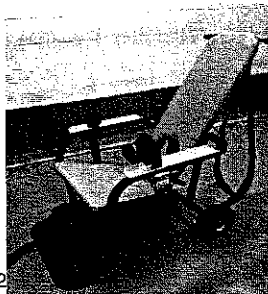
At least one county jail visited was operating at dangerously low staff levels, and although this has been brought to the attention of that county's board of supervisors for many years this jail is consistently denied the additional funding to provide adequate staff. In this case, the board of supervisors acknowledged the issue and potential for great harm, but instead chose to risk the safety and security of the inmates and facility. Even more troublesome are the jails that routinely operate with only a dispatch-jailer on site at the facility during certain hours, with no dedicated jailers present to respond to emergencies.

#### v. Incident Responses by County Jails

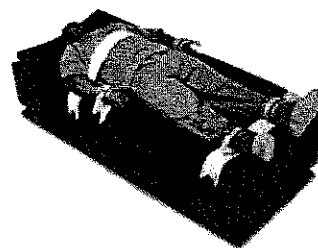
Prisons and jails are not designed to be therapeutic environments, nor can they compromise safety and security to reflect a more therapeutic atmosphere. Correctional staff operate on policies designed to safely house people whose behavior violates the law, who can be threatening, violent, or destructive. For individuals with mental illness who get entangled with the criminal justice system instead of accessing treatment services, these policies may result in some grim responses to behaviors associated with their illness behind county jail bars. Jails use a variety of "tools" as responses to incidents of violence, self-harm, and rule breaking. One such tool is a restraint device. Jails typically use one of two possible restraint devices, a 4 or 5-point restraint chair, or a restraint table. One jail DRI visited uses a third type of device called a "wrap" that resembles a sitting-position straight jacket.



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Restraint devices can be used when an inmate is actively self-harming, violent or aggressive.<sup>45</sup> However some jails identified using these devices when inmates were damaging jail property. Inmates with mental illness who are experiencing self-harm or suicidal ideations are likely candidates for restraint as there is not typically a mental health staff person employed full-time at most jails, and jail staff need to use the only tools they have on hand to prevent the person from hurting themselves.

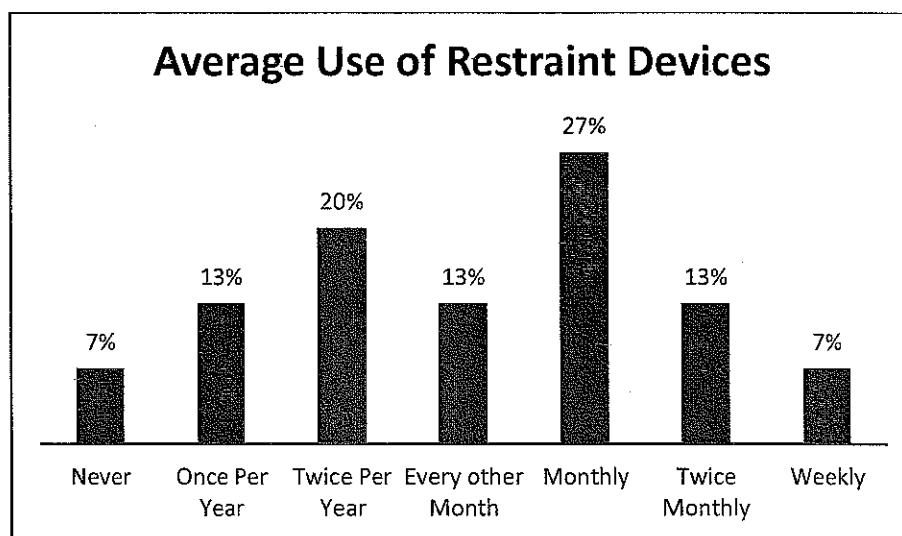


Figure 9: A chart shows the percentages of jails which use restraint devices at various frequencies. Most jails use restraint devices on a monthly basis.

Another “tool” that a few jails use if a person is suicidal or self-harming is a meal substitute that does not need to be served with utensils or a tray, which could be used to harm someone. This substitute meal is revoltingly known as “the loaf.” This meal replacement traditionally is called “Nutra Loaf” and should consist of a standard recipe for a calorie and nutrient dense food, which is baked in a small pan. However historically some jails have not used a separate recipe for creating food loaf, and instead have just blended the contents of a regular inmate meal tray, and then baked the resulting product in a pan until it is solid. Iowa law indicates that deviation from normal inmate feeding procedures shall not be used as punishment; however, the existence and process of “the loaf” in the latter description in itself indicates that this policy is not followed.<sup>46</sup> Legally jails must provide a nutritionally adequate diet; however, beyond that standard it is up to jail staff’s discretion to control the actual contents of the meals served.<sup>47</sup> However, if safety and security are truly the concern behind restricting utensils and trays to inmates, then a sack lunch or soft foods may be provided to the inmate with a process that is much easier for jail staff and much less disgusting for inmates. Most jails DRI spoke with stated that they have their own internal policies prohibiting the use of food loaf. However as with most issues not specifically regulated by Iowa law, jails are left to decide for themselves whether or not to implement such practices and as such it continues in a few jails across the state.

Another possible incident response at the disposal of many jails is the use of a special cell in which to temporarily house an inmate experiencing behaviors typically associated with mental health crisis. These cells, often called “special management cells,” “suicide cells,” “dry cells,” or “strip cells,” can have different amenities, but typically have less furniture than a typical cell or no furniture at all. These cells also traditionally have higher visibility to security staff, and often do not contain fixtures for running water or toilet facilities. In some cases the cell is simply a small room with a solid door, containing a drain in the floor for the person to use as a toilet. Although these “special” cells are not exclusively used to house inmates

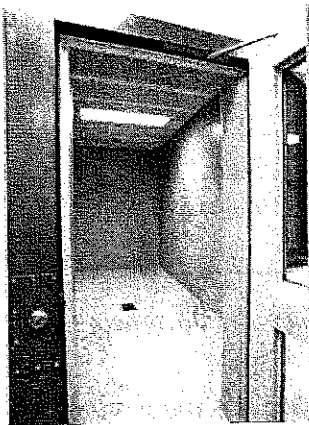


Figure 10: A special status cell.

with mental illness, the behaviors that predicate placement in these cells are often the same behaviors expressed by someone in a mental health crisis: self-harm or suicidal behaviors, aggression, and unpredictable or defiant behaviors.

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“I cry a lot at night when they put me in that dark room. I feel like giving up. Now I’m at the point I don’t want to live at all.”

— an inmate in a county jail in Iowa

## vi. Correctional Officer Training

In Iowa jail officers must complete a training program that includes instruction in recognizing symptoms of mental illness and suicidal tendencies.<sup>49</sup> Additionally “all law enforcement officers are required to have continuing education in mental health;” however, even training above the minimum requirement “still does not provide the skills necessary to meet the critical needs of many prisoners.”<sup>50</sup> Training content is not defined under law, and can

## THE JAIL IS UNABLE TO DEAL WITH JOHN’S BEHAVIORS

With an untreated mental illness that prevented him from leaving his small cell, John suffered tremendously. John spent his days naked and left to wallow in his small filthy cell, which was often flooded and smeared with his own feces, conditions non-befitting human dignity. John’s psychosis led to troubling and often dangerous behaviors in the jail. John was eating his own feces, flooding his cell, and often aggressive, yelling incoherently. During one such incident jailers tried to remove John from his flooded cell, when he attacked the jailers before being dragged from the cell. This resulted in John being charged with a new crime, assault on a peace officer. Despite his inability to understand what was happening to him on even the most basic level, the charges mounted, even as the state failed to secure him treatment for the very illnesses that led to his institutionalization.

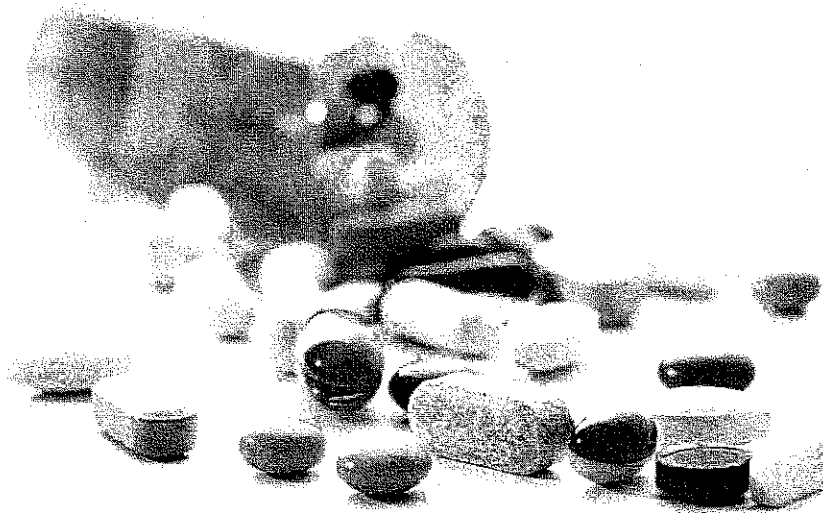
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sometimes consist of the officers watching a video describing hallmarks of some mental illnesses, others may have mental health practitioners perform training for their agency in person. 67% of county jails only provide the basic minimum requirement of training to their officers. 20% of jails provide additional mental health training to select senior officers, and only 33% of jails require additional mental health training for every correctional officer. Several Sheriff's offices have arranged multi-agency trainings that were available to other law enforcement agency staff that included information from professionals and practitioners on crisis intervention and de-escalation techniques.<sup>52</sup>

Some Sheriffs who were interviewed expressed resistance to the idea of any additional training for their officers, stating that the officers already have time-consuming training requirements, and no additional mental health training is needed because their facility is not a mental health institution.

## Part II: Mental Health Treatment and Medications in Iowa's County Jails



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*"Correctional institutions are reservoirs of physical and mental illness, which constantly spill back into the community. If these diseases are to be treated properly, transmission interrupted, and the health of the general public optimized, then effective treatment and education must be provided within the jail system."*<sup>54</sup>

-Jay M. Pomerantz, MD

## I. Introduction

In Iowa's communities people have access to pharmacies and physicians, and many people take medications that affect their health, medical conditions, and even maintain lives in many cases. When a person is arrested and booked into a jail, access to that medication may end suddenly, whether it is a medication to treat a heart condition, seizure condition, or mental illness. Some of these medications require a person to take them on a timely and regular basis, or they will suffer negative

effects that could be potentially irreversible or even deadly. "I have been told my medications for anxiety are being cut without seeing

Denial of access to mental health treatment and a doctor. Please, please help me."  
medications is the most common complaint that DRI – an inmate in a county jail in Iowa

receives from inmates of county jails. Inmates contact DRI stating that they haven't received their medications since they were booked into a jail, that they have had their medications changed without consulting with any medical professional, or that their mental health medications have been withheld until they are able to provide payment for them. This report will discuss the legal responsibility of jails in providing mental health treatment, and will explain how jails are meeting, or not meeting, this important obligation.

## II. Discussion

### A. Legal Responsibility of Jails in Providing Mental Health Treatment

The Eighth and Fourteenth Amendments to the United States Constitution require jails to provide inmates with adequate mental health care.<sup>55</sup> Courts have determined that an inmate's right to mental health treatment is no different than their right to physical health treatment. County jails have the legal responsibility to provide treatment for the "serious medical needs" of inmates who are in their custody.<sup>56</sup> Serious needs include any condition, including mental health conditions, that have been diagnosed by a physician as needing treatment, or any other obvious condition that indicates a doctor's attention is needed.<sup>57</sup> Thus, if a jail houses a person who arrives at the jail with a valid prescription to treat a condition the jail must provide that treatment under the law. This legal responsibility is tempered however, by the ability of the jail to rely upon the medical opinion of practitioners that they provide to the inmate after the person enters the jail.<sup>58</sup> As such, inmates must be provided with access to their existing prescription medications after being booked into a jail, but those prescriptions can legally be changed, or discontinued, by another medical practitioner who sees the inmate while they are incarcerated. County jail staff also have a duty to investigate inmate medical complaints, and refer to medical professionals when there is a serious medical need. Treatment provided must "meet an acceptable standard of treatment and care in terms of modern medicine and technology, and current beliefs about human decency."<sup>59</sup>

## B. Availability of Psychiatric Treatment

The state of Iowa is facing a mental health professional shortage. While some states average over 15 mental health professionals per every 100,000 residents, Iowa has fewer than 6 for that same population.<sup>60</sup> A further complication of this deficiency is that most psychiatrists in Iowa are clustered in a few select counties that have higher populations. Almost two-thirds of Iowa's psychiatrists practice in Polk, Johnson, and Linn counties, while sixty-eight counties don't have any psychiatrists at all.<sup>61</sup> As a consequence, practicing psychiatrists often have full case-loads, resulting in long wait times for patients. Considering the difficulty of private citizens to access mental health treatment, it is unsurprising that inmates also face barriers to accessing this care.

Approximately 70% of county jails in Iowa provide some form of mental health treatment to inmates who have mental illness, beyond medication confirmation and management. County jails typically provide mental health care for their inmates by one, or a combination of the following methods: in-house services provided by a mental health professional who comes into the jail; transportation off-site for the inmate to see a practitioner in the community; or services are provided via telemedicine which allows psychiatrists to visit with inmates via web camera on a computer at the jail.

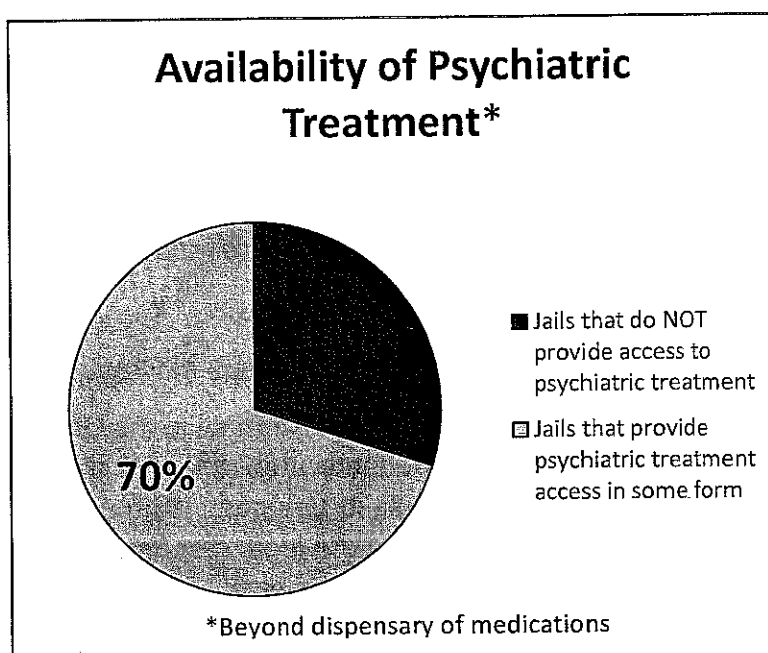


Figure 11: Pie chart showing that 70% of County Jails in Iowa provide mental health treatment beyond dispensary of medications.

Transporting inmates outside the jail to local community health centers, or to psychiatry offices or mental health institutes across the state, not only poses significant logistical and financial burdens on jail budgets and staff, the shortage in local mental health resources also results in long waits for inmates who could be in crisis, coupled with long travel while restrained. Many jails are looking for a more efficient way to provide inmates with mental health treatment without the long waits or hours of travel. Some of these jails work with their local Community Mental Health Centers, MHDS Regions, and some have turned to purchasing services via telemedicine. Telemedicinal psychiatry has become a good option for rural jails, or jails located in counties that have no community mental

health centers. Often MHDS Regions will contribute funding, or counties will partner with each other to provide funding for a telemedicine contract that allows the services to be accessible to multiple jails. These efforts, and other jail diversion efforts are discussed further in the third and final part of this report.

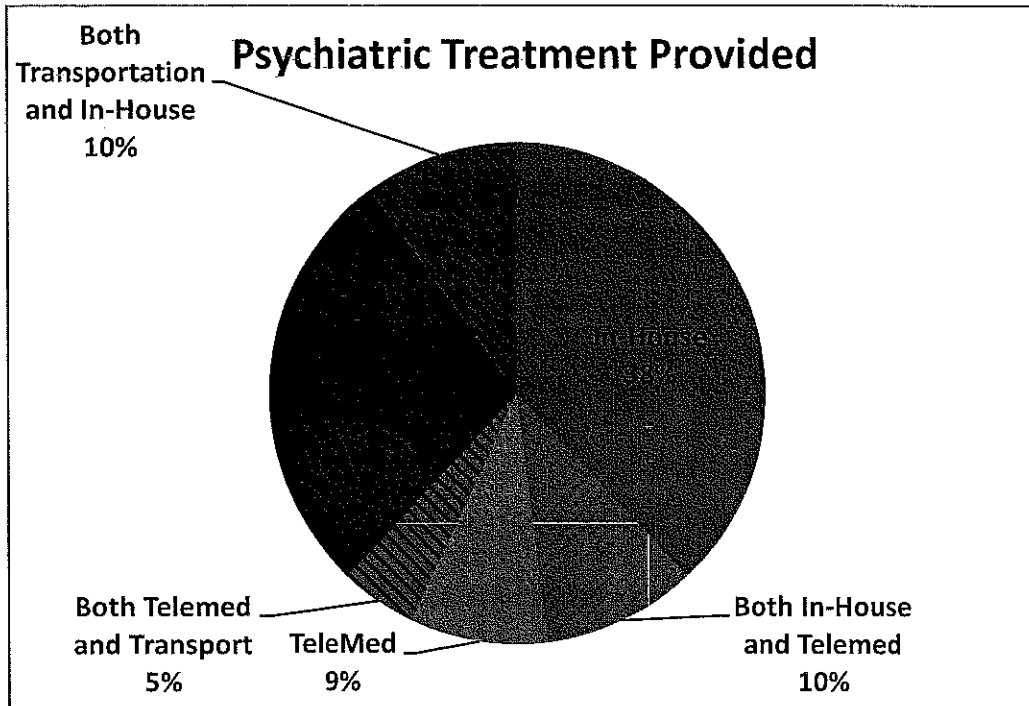


Figure 12: Pie chart showing percentages of types of treatment provided by county jails.

The 30% of Iowa's county jails that do not currently provide any mental health treatment options beyond medication management are falling below the legal standard of care for their inmates. These jails need to immediately identify psychiatric resources available to them in preparation for inmates with serious mental health needs, as even a delay in provision of this care can result in serious injury to the inmate.

Iowa law states that every jail "shall have a written plan to provide prisoners access to services for the detection, diagnosis and treatment of mental illness. The plan shall include a mental health screening process at admission."<sup>62</sup>

### C. Access to Prescribed Medications

DRI consistently receives complaints from county jail inmates about access to prescribed mental health medications. Inmates and their family members have stated that upon entering jail, the inmate is denied access to their prescription medications for days or weeks after the inmate is booked, or the medication is restricted from them for the entirety of their stay. These complaints can be condensed to three distinct issues: initial access

to medications after booking, jail policies restricting certain medications by formulary or type, and denial of access based on non-medical factors such as cost or convenience.

#### i. Initial Medication Administration

Initial administration of medications in jails requires the confirmation and acquisition of the inmates current, valid prescription. Approximately 84% of county jails allow inmates or their family members to bring medications to the jail to allow for quicker access; however, usually the medication must be in its original prescription bottle, and it typically must be confirmed with a pharmacist before it is given to the inmate. This is because some inmates will bring in medications that are not valid, not what they are labeled, or are not their own. Some jails allow medications to be brought to the jail, but use it only to identify the correct and current information, then the inmate is given the same drug from the jails own dispensary. The remaining 13% of jails do not allow outside medications to be brought in, often because they do not have access to on-site staff or resources that allow them to confirm medications. Administration of medications after booking can be further delayed if the inmate is intoxicated, if the inmate is booked in late at night when medical professionals are not immediately available, or if the inmate cannot provide current information about their medications.

"I was booked into the jail along with all of my medications, yet a lot of my meds were suddenly discontinued."

- an inmate in a county jail in Iowa

Although confirmation and acquisition of a new inmate's medications can take time, jails should have efficient existing processes for this as delays in administering medications to inmates can constitute deliberate indifference in violation of the inmate's constitutional rights.<sup>63</sup> For example, delaying access to medications such as anticonvulsants, insulin, certain heart medications, and antipsychotics risks serious health complications for the inmate.

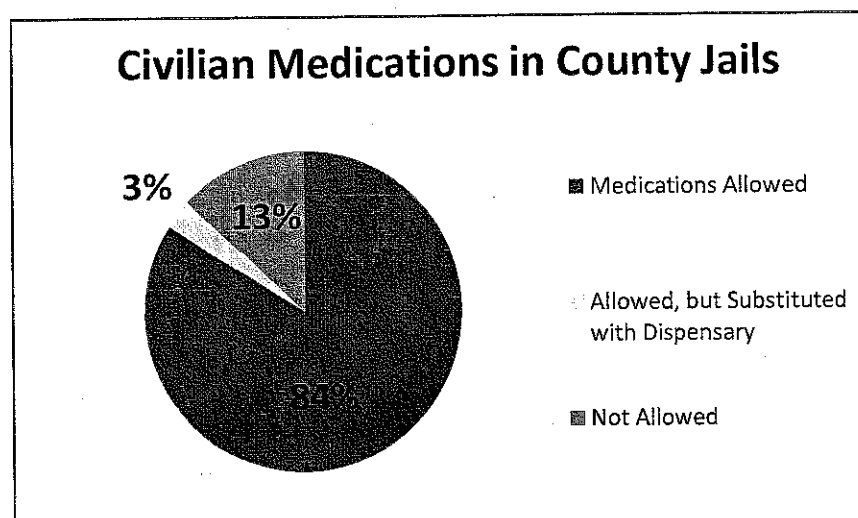


Figure 13: Pie chart showing that 87% of county jails allow inmates to bring in medications from the community.

## ii. Medication “Type” and Formulary Restrictions

Another consistent complaint DRI receives from mentally ill inmates is the denial of access to specific medications, blocked by the jail as a result of their “type.” Bans on the antipsychotic drug “Seroquel” are very common among county jails. Other common examples of medication “type” restrictions in jails include jail policies banning narcotics, benzodiazepines, sleep aids, and amphetamines. For example, if a person has a valid prescription for Alprazolam (a common benzodiazepine) and gets arrested, once they are processed into a county jail they are at risk of not having access to that medication, even if they have taken that medication for years.

Some jails contract with medical professionals who will review the inmate's medical history and will often substitute the benzodiazepine with an alternative drug, or gradually withdraw

“I have been denied my prescription for Trazadone for my sleeping disorder and I’ve been denied Klonopin for my anxiety disorder for 7 months.”

-an inmate in a county jail in Iowa

the inmate from the drug using taper procedures. Other jails will discontinue the medication entirely without medical oversight, a policy that can be harmful or even deadly to inmates who have been on the medication for years.<sup>64</sup> An inmate in an Ohio county jail was refused access to his prescription for Alprazolam and died within days from excruciating withdrawals that resulted in hallucinations.<sup>65</sup> That jail was sued by the family members of the deceased inmate and settled for over 3 million dollars.<sup>66</sup> This case is not unique. A simple internet search revealed dozens of similar cases and this situation could repeat in Iowa if jails continue to improperly deny inmates access to their medications. Jails which by policy or practice ban certain mental health medications and refuse inmates access to these medications without medical assessment or monitoring, risk the health and safety of their inmates as well as place themselves at great risk of liability.

Approximately 57% of Iowa’s county jails restrict inmate medications based on type, but more than half of those jails allow exceptions to these restrictions or perform medically supervised tapers.

Similarly, many jails may restrict certain inmate medications by brand, based on an established formulary. Larger jails, and those who contract with a correctional medical company, often order medications from a pre-defined list of medications that are identical or similar to name-brand drugs. Disputes over jail formularies arise when there is no exact generic drug equivalent for an inmate’s prescribed medication. This is especially problematic if an individual has managed their mental illness over a long period of time with a drug that is not on a jail’s formulary list. In these situations, substituting mental health drugs is a risky gamble which might result in the unnecessary decompensation of a person who had previously successfully managed their symptoms, but regresses to

mental illness when in jail. Notably, almost every jail interviewed indicated that they provide exceptions to their formulary in such cases, and if necessary for the treatment of a particular inmate, a name-brand or off-formulary drug will be provided.

Legally, medication decisions including changes based on type or formulary are covered by the same principles. County jails are required by law to provide prescribed treatment for diagnosed conditions of incarcerated inmates. The Iowa Administrative Code states that a

"prescription medication, as ordered by a licensed physician...shall be provided in accordance with the directions of the prescribing physician[.]"<sup>67</sup> However, jail staff can rely on the opinion of the medical authority they provide to the inmate over the inmate's civilian physician.<sup>68</sup> Thus it is acceptable under the law for a jail to substitute an inmate's civilian medications with new drugs recommended by a physician who contracts with, or works at the jail. This means that an inmate's civilian medication can be substituted by type or substituted to a drug covered under the jails formulary *if* the jails licensed treating physician recommends it. However the law does not allow non-medically trained jail staff to unilaterally restrict confirmed prescription treatments for inmates, solely based on jail policy, without the consultation or supervision of trained medical staff.

"The jail changed my meds without consent and when they offered me the new ones without any information I refused to take something I knew nothing about."

-an inmate in a county jail in Iowa

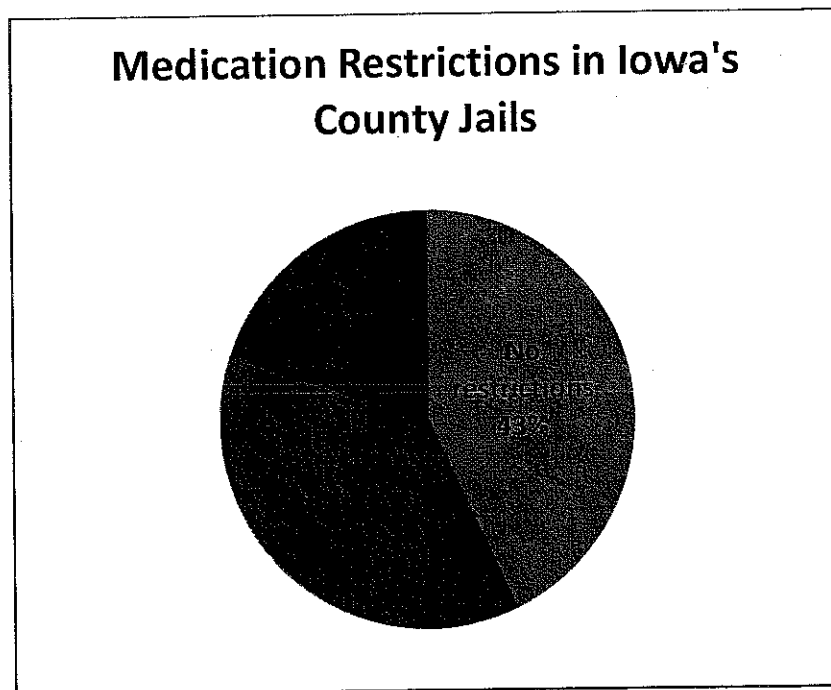


Figure 14: Pie chart showing that 20% of county jails in Iowa restrict access to certain medications without exceptions or providing tapers.



### iii. Non-Physician Medical Decisions

Jail staff who are not medical professionals should not make medical decisions concerning inmate treatment. Medical decisions based on non-medical factors such as cost, duration of confinement, disciplinary reasons, or the ability of the inmate or other party to pay for the treatment, are not allowed under the law.<sup>69</sup> Similarly, if jail staff or medical staff provided by the jail make decisions that are so inadequate that “no trained health professional would ever make that decision” the inmate may have a valid claim for violation of his or her constitutional rights.<sup>70</sup> Iowa law requires that every jail have a designated licensed physician, and have access to medical resources on a 24-hour basis.<sup>71</sup>

DRI has received multiple complaints from inmates stating that they have been denied access to mental health appointments or medications based solely on their inability to pre-pay for the treatment.

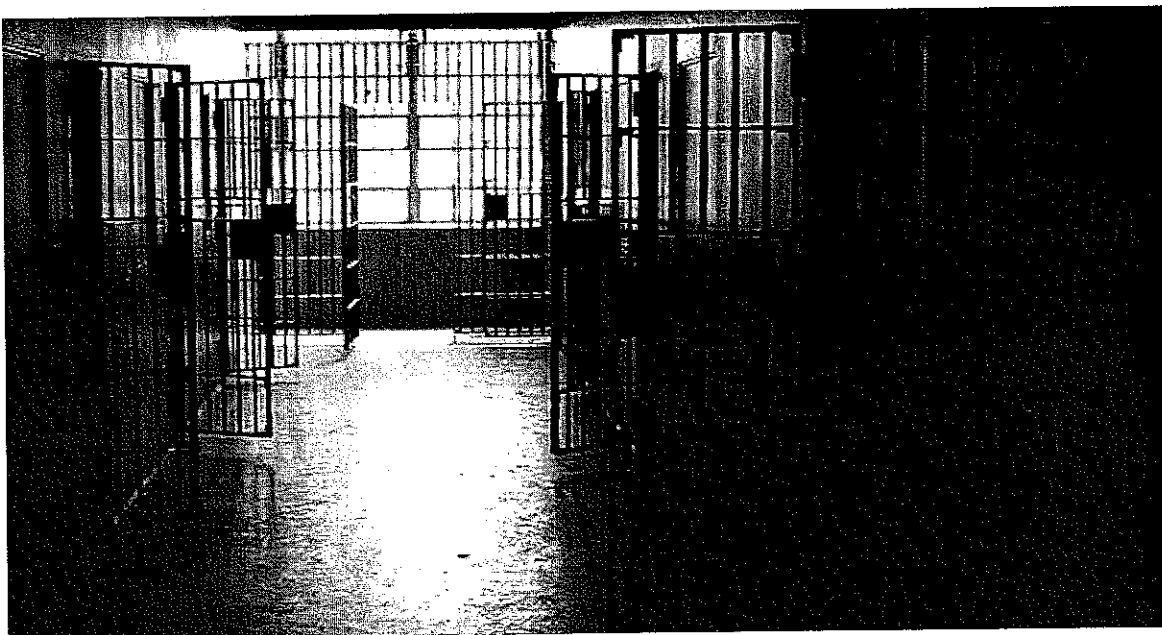
“I completed the medical kite to get a mental health appointment and they said they’re not going to make me an appointment because I don’t have \$150.00 to cover it.”

— an inmate in a county jail in Iowa

Although most interviewed jail staff indicated deference to opinions of medical staff, or stated that they take the inmates to the local hospital if they have any doubts or concerns about the person’s health or medications, not all jail staff indicated such caution. More than once DRI encountered staff who stated that they determine which medications inmates receive based on non-medical factors. For example, one agency indicated that in the case of an inmate who has identified many medications, they negotiate with the inmate about which identified medications they will receive until they can get an appointment with a local physician. On another occasion jail staff indicated that if an incoming inmate was on Medicaid but did not either bring their medications with them or have access to a Medicaid-financed re-fill, they would not provide the inmate with the medication until they were due for another re-fill.<sup>72</sup> In both of these situations jail staff without the requisite training are making medical decisions for inmates, risking the health and safety of their inmates, and opening up their agency to potential liability. Although we informed these agencies of the impropriety of their policies, and they rectified their practices, it is likely other jails in the state are also making medical decisions based on non-medical factors.

Although jails are not designed as therapeutic environments, and accessing mental health treatment for inmates can be logistically challenging, Iowa’s county jails must have effective policies and practices in place to ensure that inmates with mental illness have access to mental health treatment and medications they need while incarcerated.

### Part III: Systemic Solutions



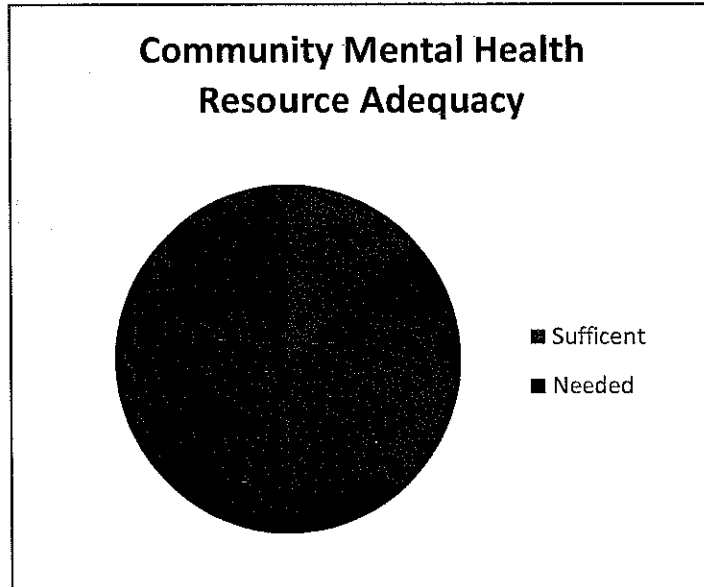
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*"We have gotten to the point we are not just reacting to the problem, but we have put some planning into how to ease overcrowding in the jails, treat mentally ill individuals appropriately, and increase awareness of the issue throughout the community."*<sup>74</sup>

-Sara Carter, Community Treatment Coordinator, commenting on the Mental Health Assessment and Jail Diversion Program in Black Hawk County

## I. Introduction

Perhaps the largest single factor that affects the likelihood of a person with mental illness becoming involved in the criminal justice system, or re-entering the criminal justice system, is the availability of mental health treatment and resources on a local level. In some counties the only people receiving mental health treatment services within the county are inmates residing in the county jail. Iowa is facing a significant shortage of trained mental health professionals, and those that do live and work in the state



*Figure 15: Pie chart showing that 87% of jail staff interviewed indicated that their local communities needed additional mental health resources.*

congregate in urban areas, leaving much of Iowa sparse for treatment options. Although Mental Health and Disability Service (MHDS) Regions are working to provide basic "Core" mental health services in all areas of the state, 87% of staff at county jails that DRI visited indicated that their county was in need of additional mental health resources. These significant gaps in mental health service delivery perpetuate a significant mental health crisis in Iowa, the consequences of which are clearly observable in our state's criminal justice system.

The previous two parts of this report focused on the systemic issues concerning the prevalence of mentally ill individuals in Iowa's county jails, and the harsh and sometimes unlawful conditions facing individuals in these settings. This third and final installment will conclude by highlighting the positive efforts of individual jails, counties, and MHDS Regions, and recommending evaluation and action by remaining stakeholders in the state. This report is not an exhaustive list of every effort occurring locally as new programs and efforts are constantly being initiated, nor is it intended as the final word on what is an ever-evolving scope of need. Rather, this report is meant to give a brief introduction to jail diversion concepts and highlight local programs to encourage other agencies and municipalities to evaluate their current systems and processes, and consider committing to action to dramatically reduce the number of individuals with mental illness in their local correctional facilities. These improved outcomes not only reduce the burden on our already overloaded state jail system, but also align far more with demands of human empathy.

To reduce the overwhelming number of individuals with mental illness entering our county jails, system stakeholders must come together and implement jail diversion efforts that make sense in their respective communities.

Though “jail diversion” is often thought of as being synonymous with mental health courts, diversion is truly encompassing of efforts on behalf of all stakeholders to interrupt the cycle of individuals with mental illness entering and re-entering the criminal justice system. Ideally, each community would have a comprehensive jail diversion program that prevents, intervenes, and is responsive to the needs of individuals with mental illness who are, or are at risk of becoming involved in the criminal justice system. However, such a robust system would require considerable resources and buy-in from various stakeholders. Lacking perfect cooperation and unlimited funds, many local stakeholders have found creative ways to combat this issue.

“[J]ail diversion is an umbrella term for opportunities to intercept and intervene with individuals who are experiencing mental health and co-occurring substance use disorders at various points of the criminal justice system”

-Jessica Peckover, Johnson County Jail Alternatives Coordinator

In Iowa, diversion efforts are being led by individual counties stepping up to create jail diversion programs, multiple counties working together to pool resources, and Mental Health and Disability Service Regions partnering to provide much needed funding and support. Although there are detailed models describing various levels of interventions, such as the Sequential Intercept Model,<sup>75</sup> efforts occurring in Iowa can generally be grouped into three areas: prevention interventions, post-booking and institutional diversion efforts, and finally, post-release efforts. The following discussion of the general types of various interventions will highlight several excellent examples of the specific programs and work around Iowa. Exploring these meaningful alternatives is our states legal, ethical, and fiduciary duty, and can lead to startlingly improved outcomes for people living with mental illness.

## II. Discussion

### A. Prevention Interventions

Efforts to prevent a person from being arrested and thus being introduced or reintroduced to the criminal justice system, are “prevention” interventions. These efforts focus resources on diverting the individual with mental illness to treatment, rather than to jail, with the general understanding that it is more effective, vastly more cost efficient for taxpayers, and the morally right thing to do if it can be done safely. The following are brief descriptions of prevention efforts around Iowa.<sup>76</sup>

### i. CIT Training

Nationwide, approximately 7–15% of all calls received by law enforcement departments concern incidents involving individuals with mental illness.<sup>77</sup> Law enforcement officers are often the first people who come into contact with individuals with mental illness who are not receiving effective treatment in our communities. Whether the individual is in crisis at home or in the community, a call to 911 to report concerns will result in law enforcement officers arriving. In some instances, law enforcement presence has had the effect of escalating situations. These interactions with officers can be frightening, volatile, or even deadly, which is why providing training to officers to be adequately prepared to identify and de-escalate these situations can be so critical. Crisis Intervention Training (CIT) is a 40-hour course designed for law enforcement officers and other emergency responders such as EMT's, to teach those individuals de-escalation techniques when they encounter someone who is having a mental health or substance abuse crisis. The training helps participants identify persons in crisis, and resolve the situation safely. "[CIT] also provides officers with information about community resources that they can access to re-direct individuals into the behavioral health system rather than the criminal justice system."<sup>78</sup>



Figure 16: Police officers utilize CIT training when interacting with an individual in crisis.

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CIT training has been completed by groups of law enforcement officers, as well as some jail staff, from several counties including Johnson, Pottawattamie, Story, Worth, and Polk.<sup>80</sup>

### ii. Mobile Crisis Response Teams

In general, Mobile Crisis Response Teams are groups of trained mental health professionals who respond to situations involving a person experiencing mental health crisis, in the same way that law enforcement officers are “dispatched” to a location. These teams typically work in conjunction with local law enforcement and are called to assist as an alternative to transporting the individual to jail, or to an emergency room. As the team members are not law enforcement officers, and have behavioral health training, they work to assess the needs of the individual in crisis, de-escalate, and connect the person with available community mental health



Figure 17: Polk County Mobile Crisis Team Vehicle.

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resources as an alternative to jail or hospitalization if appropriate. In Polk County, the mobile crisis response team began operating in 2001 and responds to over 200 calls per month.<sup>82</sup> Mobile crisis teams are currently operating in 18 counties, including Pottawattamie, Polk, Warren, and all counties within the Heart of Iowa Community Service Region, as well as the MHDS of the East Central Region.<sup>83</sup>

"[Mobile Crisis Response] allows our officers to get back on the street, and get properly trained people assessing the situation and getting (the individuals) where they need to be. It's all about getting people the help they need without taking them to jail, and keeping our officers on the street."<sup>12</sup>

-Captain Knight, Polk County Sheriff's Office

### iii. Crisis Stabilization Locations

Crisis stabilization units provide a physical location for short-term, intensive mental health treatment in the community. These units provide an alternative safe place for law enforcement officers to bring a person rather than leaving the person in the community, or taking them to jail. Generally, these units provide assessment, treatment, peer support, and ultimately act as a gateway to access local outpatient mental health services as well. In Iowa, five MHDS Regions are providing crisis stabilization beds or units, including Heart of Iowa Community Services Region, County Social Services, MHDS of the East Central Region, South Central Behavioral Health Region, and Southeast Iowa Link.<sup>85</sup> Additionally, Polk County operates a 23-hour crisis observation center, and Johnson county is working towards a plan to approve and fund an "Access Center" diversion campus.<sup>86</sup>

"When law enforcement officers respond to an individual in crisis, they have historically had 3 options: leave them where they are, take them to the ER, or take them to jail. Many communities around the country that started their jail diversion efforts with CIT training for officers quickly realized they needed a place for officers to divert individuals TO."

Jessica Peckover, Johnson County Jail Alternatives Coordinator

## B. Post-Booking and Institutional Diversion

Most formal jail diversion programs in Iowa are "post-booking" efforts, targeted towards mentally ill individuals who are currently residing in county jails. These programs largely focus on connecting mentally ill inmates with community resources and treatment when they are released from jail, in the hope that treatment will stabilize the individual and they will not reenter the criminal justice system. Some jail diversion efforts are "Core Plus" services paid for by Mental Health and Disability Service Regions, or other assistance provided to current jail inmates to provide medications or mental health appointments.

There are also formal mental health courts. Finally, some jails will initiate civil commitment proceedings for current inmates who need inpatient hospitalization or medications.

i. Jail Diversion Coordinators who Connect Inmates with Resources

Many post-booking jail diversion programs boil down to the hard work and efforts of a single person coordinating resources, communication, and stakeholder buy-in on a local level. These individuals are often given the title "Jail Diversion Coordinators." Jail Diversion Coordinators are designated staff who perform a variety of services designed to identify inmates with mental illness, assess their eligibility for programs and resources, obtain evaluations for treatment, and coordinate provision of services for the person while they are in jail and when they leave jail. Some Jail Diversion Coordinators will assist individuals in applying for Medicaid or Social Security benefits, set up mental health treatment appointments in the community, and follow up with the individual upon their release. These coordinators can be employees of the Sheriff's office or jail, the MHDS Region, or can be funded by multiple counties or combinations of funds from various stakeholders.

**Post-Booking Program Feature: Johnson County's Jail Alternatives Program**

In response to jail overcrowding and the community demand for treatment alternatives to incarceration, the Johnson County Jail Alternatives Program began in 2005 as a post-booking mental health diversion program. The program's goal is to provide treatment services to individuals with mental health and co-occurring substance use disorders who have come into contact with the criminal justice system. The program works to identify individuals at their earliest point of contact with the justice system with the goal of preventing further penetration into the system. The program connects individuals to the appropriate level of community-based treatment for their mental health and co-occurring needs. Twin aims are to improve their overall quality of life and to reduce their involvement in the criminal justice system. In addition to addressing behavioral health needs, the program helps participants to access community resources for housing and employment assistance, entitlement benefits, healthcare, and food assistance, while also helping to develop the individual's support network.

In addition to the post-booking mental health diversion program, Jail Alternatives staff partners with community stakeholders to implement jail diversion efforts at various intercept points. Other alternatives to incarceration efforts in Johnson County include specialized caseloads for community based corrections, re-entry transition planning for individuals returning from jail and/or prison, and drug treatment court. In 2013, Johnson County initiated a "jail population reduction" meeting that involves a district associate judge, assistant county attorney, public defender, jail command staff, and Jail Alternatives staff going through the jail census on a weekly basis to identify individuals who could be better served in the community or whose case could be expedited.

-Jessica Peckover, Johnson County Jail Alternatives Coordinator

The Jail Alternatives program in Johnson County has been credited with dramatically reducing the average daily population at the jail. In 2010 the average daily population at the jail was 167 inmates. Last year the average population at the jail decreased to only 109.

Many jail diversion programs began by one county sheriff developing a diversion program, then expanding that program to surrounding counties when other sheriff's departments learn about the benefits and success of the diversion program. In Iowa there are at least 40 counties that have post-booking jail diversion programs.<sup>87</sup> Even given the often limited resources at their disposal, many of these diversion programs have had a marked effect on outcomes within their region. By funding these programs more formally and fully, the state can look to even greater outcomes, and the cost-savings that will result from this investment.

## ii. MHDS Assistance with Provision of Medicine and Treatment to Inmates

A critical facet of the challenge presented with the incarceration of mentally ill persons in county jails is the presence of a relationship between the jail and the MHDS Region, often via a jail diversion program. Jail diversion is currently listed as a "Core Plus" service to be offered regionally, dependent on budget surpluses after fully funding Core services. Currently 10 of the 14 MHDS Regions support jail diversion as a Core Plus service.<sup>88</sup> Successful jail diversion programs are often the product of a good working relationship between MHDS Regional staff and county jail staff.

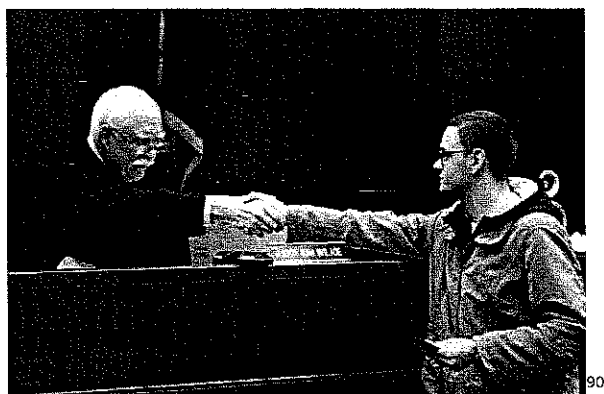
Even in counties where there are no planned or operational formal jail diversion programs, relationships with MHDS Regions are often critical to the successful housing and treatment of mentally ill inmates while they are inside the jail, and re-entry of those individuals when they are released. Most MHDS regions have stepped up to the plate and either directly provided jail diversion services or funding, or partnered with their local jails in other ways. There are only 2 MHDS Regions that do not provide any services as Core Plus jail diversion and do not have any relationship with the jails within their geographic area. Of the 14 MHDS Regions, 8 Regions provide financial assistance to provide mental health treatment or medications to individuals who currently reside in a county jail. Beyond funding assistance, approximately 86% of county jails have some kind of relationship with their MHDS Region. Regions often provide support and arrange for treatment for individuals with mental illness while they are incarcerated in county jails, and facilitate transition to community services when the person is released. Several MHDS Regions have contracted with tele-medicine psychiatry services that are made available to the jails within their area. The remaining 14% of county jails have no relationship with their MHDS Region.



Figure 18: A medical provider consults with a patient. 89



### iii. Mental Health Courts



*Figure 19: A Judge of a mental health court shakes the hand of a man who recently completed the program.*

Mental health courts work to intervene in the disposition of criminal charges against mentally ill persons by pairing mental health treatment and services with pre-trial release supervision, or dismissal of charges after completion of program requirements. Often these programs require follow through with medications and mental health appointments, regular meetings with the court, and are only available to individuals with non-violent criminal charges. However, these programs require funding and the commitment and assistance of multiple parties such as judges, county attorneys, public defenders, and jail or mental health staff. As a result, formal mental health courts are difficult to implement, and as such these programs are not common. In Iowa there are mental health courts in Scott County, Pottawattamie County (including the surrounding counties in the 4<sup>th</sup> Judicial District), and Woodbury County.

After years of work to obtain support, and after supporters were able to obtain a large financial grant, Scott County is now operating a mental health court. The court will help individuals with serious mental illness who are charged with non-violent offenses to stay out of jail as long as they comply with mental health treatment, and appear in front of the judge weekly. If an individual successfully completes the program, the conviction for their criminal charge is wiped from their record.

In 2014 Pottawattamie County was awarded a federal grant that provided funding to establish and support a mental health court. This court covers all nine counties in the Fourth Judicial District. The federal grant pays for the mental health treatment therapy for court participants, and many of the court team members volunteer their time.<sup>91</sup> Once the grant ends, the Southwest Iowa MHDS Region plans to provide funding to support the program.<sup>92</sup>

#### iv. Civilly Committing Individuals who Currently Reside in Jail

Although civil commitment may not traditionally be thought of as a jail diversion effort, efforts to provide mental health treatment and stabilization for an individual undoubtedly affects the likelihood they will re-offend and re-enter the criminal justice system. Inpatient civil commitment requires placement of a committed person with a serious mental illness in an appropriate treatment facility.<sup>93</sup> Iowa has approximately 731 psychiatric inpatient beds spread across the state. When a current inmate exhibits signs of serious mental illness, and jail staff or family become concerned for the individual's wellness and safety, an application for civil commitment can be filed with the court to commit the individual to inpatient mental health treatment. If successful, an application for civil commitment will not dispose of the individual's criminal charges, rather it will result in the person being given mental health treatment rather than sitting in jail where their mental health may worsen. As a result of logistical challenges disposing of criminal bond requirements and finding a treatment facility that is capable and willing to house individuals with pending criminal charges, this process only occurs in some counties. This practice is becoming less common because even if the court approves the order for inpatient treatment often no treatment facility will accept the individual. Many of Iowa's inpatient psychiatric beds are restricted from access for persons who have aggressive behaviors or pending criminal charges, which further limits access to treatment for some of the people most in need of such services. Of Iowa's 97 county jails 47% will pursue civil commitment of inmates with serious mental illness, either by attempting to place the individual in treatment off site, or by forcing medications. The remaining 53% of jails do not attempt this.

#### C. Post-Release Efforts

Recidivism occurs when a person who has previously been involved in the criminal justice system gets re-arrested or charged with a new crime, and thus re-enters the system. Approximately 75% of mentally ill inmates in local jails have prior convictions.<sup>94</sup> Efforts to prevent recidivism and thus prevent the individual from returning to jail, are known as "post-release" efforts. Post-release efforts are typically individualized supports designed to address the person's basic needs and targeted towards addressing the reasons why the person may have become involved in the criminal justice system in the first place. Providing access to consistent mental health treatment, medications, housing, transportation and other resources the individual may be eligible for are all examples of excellent post-release efforts. The following program feature is an excellent example of one Iowa jails in-house jail diversion efforts extending beyond the walls of the facility to assist individuals who have left the jail and re-entered the community.

**Program Feature: Jail Based Service Coordinators in Pottawattamie County  
and the Southwest Iowa Mental Health Region**

In 2015 a group of stakeholders gathered to discuss gaps in available services in Pottawattamie County. The group recognized that there was a significant gap between incarceration and gaining or maintaining services and stability. As a result, the Pottawattamie County Sheriff's Office partnered with the Southwest Iowa Mental Health and Disability Services (SWIA MHDS) Region to provide Jail Based Service Coordinators. In the summer of 2016 two Jail Based Service Coordinators began working out of the Pottawattamie County Jail. The Coordinators provide re-entry assistance and link inmates to services upon their release from the Pottawattamie County Jail and all jails in the SWIA MHDS Region. Upon inmate request the Jail Based Service Coordinators help inmates with services such as substance abuse treatment, follow-up medical or mental health services, Medicaid applications, medication programs, housing, job readiness, and more. The Jail Based Service Coordinators follow-up with released inmates in the 30 days after the inmate is released to ensure they have connected to services and provide further assistance as needed. Each inmate working with the Jail Based Service Coordinators is provided their contact information and the Hope4Iowa crisis line information prior to release from jail. For individuals with significant needs, Service Coordinators have the option of making a referral to Region Service Coordination.

In the first two months after introduction in Pottawattamie County, 167 inmates requested assistance from the Coordinators. Since introducing the program to other jails in the region the total requests for assistance have increased to 260. The Jail Based Service Coordinators are in position to make a positive impact in many ways. Connecting inmates to services to use upon their release will provide tools to help them work towards success. We are encouraged by the overwhelming reception of the program and look forward to seeing the impact to the individuals, the jails, and the communities within the SWIA MHDS Region.

-Tiffany Mass, M.A., CJM

Jail Administrator, Pottawattamie County Jail

One of the most critical components of a successful re-entry plan for an inmate returning to the community is consistent, affordable access to mental health medications and treatment appointments. Someone who has just been released from jail will likely have many barriers to obtaining treatment and medicines in the community. Because Medicaid health insurance often terminates for individuals who have been jailed, and because of transportation or other barriers, individuals who are being released from jails face hurdles to maintaining access to treatment and need time and resources to do so. Staff at several jails DRI visited indicated that inmates leaving their facilities are given a small supply of their medications to take with them. Some jails arrange for the prescriptions inmates received to be available for them at pharmacies in the individual's local community. MHDS Regions have also been stepping up to work with individuals leaving county jails, by assisting them in procuring mental health medications and by setting up and funding

mental health outpatient treatment appointments. Often MHDS staff who work with their local jails will form client relationships with the individual inmates, and follow up with those individuals after they leave the jail via case management and other resources. Some MHDS Regions have gone further and dedicated significant time and resources to combat this issue. The program featured below exemplifies one such effort.

**Program Feature: Heart of Iowa Community Services Region Post-Booking Jail Alternatives Program and Post-Release Transitional Housing**

The Heart of Iowa jail diversion program got its start in Dallas County in 2009. The program has grown by leaps and bounds since that time as needs have been identified including encompassing all of the counties in the Heart of Iowa region beginning in July 2014. The goal of the HICS Jail Alternatives Program is to reduce recidivism while offering therapeutic community alternatives to incarceration.

Upon booking into the jail, each individual is screened for a history of mental health, substance use, intellectual disability, or brain injury. Their medication history is also requested. While in the jail, each individual is offered a substance abuse screening. If identified as a need, further evaluation and services are offered. Should an inmate request mental health services, they have access to a licensed mental health therapist for evaluation and ongoing counseling. We offer telepsychiatry in each of our jails which includes medication management. Though the jail does work with a medical company, mental health medications through our program are ordered through a local pharmacy in the community so individuals have access to medications upon release from jail.

Our program has dedicated staff who work with individuals in the jail and also attend court days to work with the county attorneys and public defenders. The dedicated staff coordinate MH and SA evaluations and placements at treatment centers. The region is also able to offer transitional housing at Hope Wellness Center in the form of a residential two phase program. Phase one focuses on mental health and substance abuse. Phase two moves toward community housing and employment while still focusing on mental health and substance abuse. Staff determine which phase they are appropriate for by utilizing a risk assessment to determine to high risk or low risk.

Whether individuals are going to transitional housing, treatment, or to their own homes in the community, dedicated staff work with them to ensure they have services set up when they leave the jail. If an individual is sentenced to prison, staff follow them through their term and interact with the re-entry coordinator to offer services upon their release.

It seems as though we are constantly adding new services to our program as needs grow. In Dallas County, we are very fortunate to work with an amazing Jail Administrator and County Attorney who see the unlimited potential in getting people the help they need. I see the program continuing to grow throughout our region.

-Darci Alt, CEO

Heart of Iowa Community Services Region

## IV. Recommendations

Unfortunately, without major systemic reform, mentally ill individuals will continue to end up in county jails in unnecessarily large numbers. The difference between county jails and mental health institutions in reality exists in name only. In every other way each facility is in the position of housing seriously mentally ill individuals and being responsible for their basic needs. By relying on Iowa's jails to serve as the last resort for those with significant mental illness, Iowa echoes the dangerous, dehumanizing, and fundamentally unsound approaches to mental health treatment of generations past. We can and must do better.

As such, DRI recommends the following:

**1.) Sheriffs and Jail Administrators** must evaluate their current operations, training requirements, and resources to identify areas they can improve in and then take action. DRI will be developing a checklist to assist jails in assessing current operations. Ongoing relationships with treatment providers, pharmacists, and MHDS Regional staff are a necessity to preparing for, and providing adequate care for inmates with mental illness. Disability Rights Iowa urges all Sheriffs and Jail Administrators to review their current jail policies with their respective County Attorneys to evaluate whether their current provision of treatment complies with the legal standards and best practices. Specifically, Sheriffs and Jail Administrators need to:

- i. Ensure that you have existing relationships with mental health treatment providers, and that your jail staff have thoughtful and practical policies and procedures to rely upon in safely and humanely housing inmates with mental illness.
- ii. Ensure provision of medications and care in a timely manner. The Eighth and Fourteenth Amendments to the United States Constitution require jails to provide inmates with adequate and timely mental health care. As such, inmates must be provided with access to their existing prescription medications after being booked into a jail, or they need to be taken to a physician immediately if their medications treat life threatening conditions. Additionally, physician monitored taper procedures should be initiated when medically indicated.
- iii. Ensure medical decisions are made by a qualified medical provider, never by correctional officers or other staff.
- iv. Ensure medical decisions are not made based on non-medical factors, such as the inmate's ability to pay for the treatment.

- v. If an arresting officer brings a person charged with a simple misdemeanor to your jail for booking who you believe is seriously mentally ill and because of that illness is likely to physically injure the person's self or others, you should admit that person to the jail only if the arresting officer has already demonstrated a reasonable effort to comply with the emergency hospitalization procedure, as provided in Iowa Code §229.22, as described in the Iowa Administrative Code §201—50.15(6)(d).
- vi. Have a process for staff to utilize to refer a person for mental health services and make sure staff know when it is appropriate to do so.
- vii. Exercise an abundance of caution. If logistically your jail has security risks, such as areas of low or no visibility, architectural design risks, or you have low staff, work with jails located in nearby counties to arrange for the housing of an inmate at risk. Work with your Board of Supervisors to address needs posed by such security risks if approval or funding is the barrier to making your jail safer.
- viii. Take precautions against inmate self-harm and suicide. Routinely evaluate your jail facility to identify potentially dangerous qualities such as hanging points and areas of low visibility which create opportunities for self-harm. Reach out to other jails if needed to learn what steps they have taken in these matters, or to have professionals from outside of your agency view your facility to identify risks you may not identify.
- ix. Ensure you have enough staff members on-site at your jail facilities to appropriately supervise all of your inmates and respond to emergencies. This is especially true if you are currently operating a jail that only has one staff person on-site who is also responsible for other duties such as operating the emergency response phone line and coordinating dispatch. Such a practice is an unacceptable risk to the safety of your inmates.
- x. Provide training to your correctional officers that will give them skills to appropriately respond to and de-escalate situations involving inmates with mental illness. Mental Health First Aid, Crisis Intervention, and de-escalation training are all excellent trainings to provide in addition to officers basic training requirements. Such approaches improve outcomes for inmates with mental illness, and create a safer, more stable environment for all involved.
- xi. If you are unsure whether your current policy and practice is compliant with legal requirements, reach out to your County Attorney for advice.

**2.) Mental Health and Disability Service Regions** must be a partner to county jails in providing mental health services to current inmates with mental illness, and following up with those individuals in the community once they are released. The best form of jail diversion is an accessible, affordable, complete and effective community mental health system. However, lacking a comprehensive and adequate mental health system, those in the criminal justice system and the Regional MHDS system can work together to drastically reduce the number of individuals with mental illness who cycle through jail stays without getting connected to the necessary treatment resources. Jail diversion efforts significantly reduce the strain on the operation of jails, law enforcement, and our communities, but also have a life-changing impact on the individual who gets connected with much needed treatment and assistance. Specifically, MHDS Regions should:

- i. Reach out to the county jails in their areas and identify areas of need and potential collaborative solutions.
- ii. Consider investing in or working with other agencies to provide Crisis Intervention Training, Mobile Crisis, transitional housing, or other jail diversion programs in your areas. Refer to existing successful local programs for information when determining what efforts are right for your Region.
- iii. Provide Jail Diversion as a Core Plus service when funds are available.

**3.) The state of Iowa** must invest resources to support a robust mental health system. The best form of jail diversion for Iowans with mental illness is an accessible, affordable, complete and effective community mental health system. Additional mental health resources need to be added to the state service system, including sub-acute and crisis services, to prevent individuals from unnecessarily coming into contact with law enforcement by providing effective treatment in the community. Specifically, the state of Iowa needs to:

- i. Increase the number of inpatient mental health beds that serve the specific needs of individuals with mental illness and establish subacute beds in all geographic regions of the state.
- ii. Incentivize attraction and retention of psychiatrists, psychologists and other qualified mental health professionals, especially in rural areas of the state.
- iii. Ensure that there are qualified mental health professionals in every region of the state that can perform competency evaluations for individuals who are awaiting trial while incarcerated in a county jail.
- iv. Encourage law enforcement agencies to complete additional training that will assist officers in responding to, and de-escalating situations involving someone with mental illness.

**4.) Members of communities, Boards of Supervisors, and other stakeholder agencies** should evaluate what you can do to alleviate the effects of transinstitutionalization in your area. Whether you can provide support to individuals with mental illness, support Sheriff's and county jail staff who are housing mentally ill individuals, or advocate for additional mental health services in your area, these efforts accumulate and have the potential to effect real positive change for all members of your communities.

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For jails and community partners that are interested in jail diversion there are several excellent resources available to provide additional information and guidance. Iowa Therapeutic Alternatives to Incarceration (ITAI) is a statewide jail diversion workgroup that meets quarterly. This group consists of staff and coordinators of several jail diversion programs around the state, as well as MHDS Regional staff and various other stakeholders, and is a great resource for agencies considering jail diversion efforts.

To reduce the overwhelming number of individuals with mental illness entering our county jails, system stakeholders must come together and implement jail diversion efforts that make sense in their respective communities. DRI recommends that MHDS Regions, county jail staff, criminal justice professionals, and other community stakeholders evaluate current community interventions available to prevent mentally ill inmates from becoming involved with the criminal justice system, and consider taking actions to reduce the number of individuals with mental illness from cycling through the justice system in their local communities. Regardless of the wealth or lack of resources in any community, creative interventions and measures can be implemented that will have an effect on the population of citizens with mental illness who are, or are at risk of being arrested and jailed. To not make use of the considerable resources of innovation, empathy, and professional capacity available to Iowa stakeholders surrounding mental health and the justice system is to perpetuate the cycle funneling Iowa's mentally ill population into our county jails, and falls far short of the foundational values so central to our state's identity.



## End Notes

- <sup>1</sup> Photo credit: Untitled/uncredited digital image appearing in: Nicole Flatlow, *Federal Prison sat by while mentally ill inmate ate his own feces*, THINK PROGRESS, Oct. 3, 2013, available at <http://thinkprogress.org/justice/2013/10/03/2721381/federal-prison-sat-by-while-mentally-ill-inmate-ate-his-own-feces/>.
- <sup>2</sup> *Trueblood v. Washington State Dep't of Social and Health Services*, 101 F. Supp. 3d 1010 (W.D. Wash. 2015); see also Joe Palazzolo, *Mental-Health Treatment for Defendants Dogged by Delays*, THE WALL STREET JOURNAL, Apr. 19, 2015, available at <http://www.wsj.com/articles/mental-health-treatment-for-defendants-dogged-by-delays-1429487659> [hereafter *Dogged by Delays*] quoting U.S. District Judge Marsha J. Pechman from her ruling ordering time limits on competency services for inmates.
- <sup>3</sup> Jennifer Bronson, Laura Maruschak and Marcus Berzofsky, *Special Report: Disabilities Among Prison and Jail Inmates*, U.S. DEP'T OF JUSTICE, BUREAU OF JUSTICE STATISTICS (2015).
- <sup>4</sup> Although many counties provided information contained in this report, the county jails DRI visited specifically as part of this project were: Adair, Adams, Allamakee, Black Hawk, Buchanan, Cerro Gordo, Cherokee, Clay, Crawford, Dallas, Davis, Des Moines, Dickinson, Dubuque, Fremont, Hamilton, Jasper, Jefferson, Johnson, Linn, Marion, Mills, Polk, Poweshiek, Scott, Washington, Wayne, Webster, Woodbury, and Worth.
- <sup>5</sup> "Transinstitutionalization." A Dictionary of Sociology. Retrieved October 20, 2016 from Encyclopedia.com: <http://www.encyclopedia.com/social-sciences/dictionaries-thesauruses-pictures-and-press-releases/transinstitutionalization>.
- <sup>6</sup> *Mortality in Local Jails and State Prisons, 2000-2013*, U.S. DEP'T OF JUSTICE, BUREAU OF JUSTICE STATISTICS, DEATHS IN CUSTODY REPORTING PROGRAM 15 (2015), available at <http://www.bjs.gov/content/pub/pdf/mljsp0013st.pdf>.
- <sup>7</sup> William Kanapaux, *The Mentally Ill Are Kept in Prisons Due to Inadequate Health Services*, in *Mental Illness and Criminal Behavior* (2009) [hereinafter *Inadequate Services*].
- <sup>8</sup> *Going, Going, Gone: Trends and Consequences of Eliminating State Psychiatric Beds, 2016*, Treatment Advocacy Center, Office of Research and Public Affairs, 15, (2016) available at <http://www.treatmentadvocacycenter.org/storage/documents/going-going-gone.pdf> [hereinafter *Going, Going, Gone*].
- <sup>9</sup> Woodbury County Sheriff Dave Drew speaking to Erin Murphy for his article, *Sheriffs at the front lines of mental health crisis*, THE GAZETTE, Aug. 29, 2016, available at <http://www.thegazette.com/subject/news/government/iowa-sheriffs-at-the-front-lines-of-mental-health-crisis-20160829>.
- <sup>10</sup> *Going, Going, Gone*, *supra* note 8, at 7.
- <sup>11</sup> Mark Smith, *Terry Branstad's Mental Health Care Crisis*, IOWA STARTING LINE, June 24, 2016, [hereinafter *Branstad's Crisis*] citing to "*Going, Going, Gone*," *supra* note 8.
- <sup>12</sup> See Tony Leys, *Iowa urged to be careful in closing mental hospitals*, DES MOINES REGISTER, Feb. 15, 2015, available at <http://www.desmoinesregister.com/story/news/2015/02/14/iowa-urged-careful-closing-mental-health-institutes/23430867/>. "Under (Governor Terry Branstad's plan) 30 beds for general adult psychiatric care would be added at the Independence mental institute, replacing a total of 24 at Clarinda and Mount Pleasant."
- <sup>13</sup> *Branstad's Crisis*, *supra* note 11.
- <sup>14</sup> *Going, Going, Gone*, *supra* note 8, at 3.
- <sup>15</sup> U.S. Census Bureau, 2015 Iowa Quickfacts Census Data, available at <http://www.census.gov/quickfacts/table/PST045215/19>.
- <sup>16</sup> *Branstad's Crisis*, *supra* note 11.
- <sup>17</sup> U.S. Dep't of Justice, Bureau of Justice Statistics, *Special Report: Mental Health Problems of Prison and Jail Inmates* (2006), available at <http://www.bjs.gov/content/pub/pdf/mhppji.pdf>; The Judge David L. Bazelon Center for Mental Health Law, Testimony submitted to the Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights, *Law Enforcement Responses to Disabled Americans: Promising Approaches for Protecting Public Safety* (April 29, 2014).
- <sup>18</sup> Terri Meier, *Iowa Department of Corrections Annual Report FY2013*, 84 (2013) available at <http://www.doc.state.ia.us/UploadedDocument/356>.
- <sup>19</sup> *Inadequate Services*, *supra* note 7.
- <sup>20</sup> *Going, Going, Gone*, *supra* note 8, at 19.
- <sup>21</sup> *Going, Going, Gone*, *supra* note 8, at 21.
- <sup>22</sup> The Lucas County Jail (holding facility only) and the Polk County Jail, which can house 1584 individuals.
- <sup>23</sup> Craig Matzke, Teresa Bomhoff and Jessica Peckover, *Why are jails mental health treatment centers of last resort?*, DES MOINES REGISTER, July 3, 2016, available at <http://www.desmoinesregister.com/story/opinion/columnists/iowa-view/2016/07/03/why-jails-mental-health-treatment-centers-last-resort/86569818/> [hereafter *Last Resort*].
- <sup>24</sup> "People with untreated psychiatric illnesses spend twice as much time in jail as non-ill individuals and are more likely to commit suicide." *Consequences of Non-treatment Fact Sheet*, TREATMENT ADVOCACY CENTER available at <http://tac.nonprofitsoapbox.com/resources/consequences-of-lack-of-treatment/violence/1384>.
- <sup>25</sup> *Dogged by Delays*, *supra* note 2.
- <sup>26</sup> Martha Bellisle, *Judge extends in-jail competency deadlines to 14 days*, WASHINGTON TIMES, Aug. 8, 2016, available at <http://www.washingtontimes.com/news/2016/aug/16/judge-extends-in-jail-competency-deadlines-to-14-d/>.

<sup>27</sup> In the state of Washington there is a court-ordered limit of 14 days to provide a competency evaluation after the order is entered, see *id.* In Maine, by statute if a person is incarcerated there is a 21-day deadline. ME. REV. STAT. tit. 15, §101-D (2016). In Wisconsin there is a 15-day deadline to provide the evaluation if the person is incarcerated/inpatient, and 30 days if the person is an outpatient. Wisc. Stat. §971(14)(2).

<sup>28</sup> Jason Clayworth, *Death behind bars: Inmate suicides, overdoses among causes*, DES MOINES REGISTER, May 28, 2016, available at <http://www.desmoinesregister.com/story/news/investigations/2016/05/28/death-behind-bars-inmate-suicides-overdoses-among-causes/83671656/>. See also <http://www.desmoinesregister.com/story/news/crime-and-courts/2016/08/26/authorities-release-name-polk-county-inmate-who-tried-kill-himself/89425076>.

<sup>29</sup> Going, Going, Gone, *supra* note 8, at 9.

<sup>30</sup> Photo Credit: Shive Hattery Architecture and Engineering, <http://www.shive-hattery.com/Projects/Justice/Project/Polk-County-Jail.aspx>.

<sup>31</sup> IOWA ADMIN. CODE §201—50.13(1)(f).

<sup>32</sup> Fred C. Osher, M.D., *Final Technical Report Validating Brief Jail Mental Health Survey* (2004), available at <https://www.ncjrs.gov/pdffiles1/nij/grants/213805.pdf>.

<sup>33</sup> DRI photo of the old Fremont County Jail. The old Fremont County Jail was one of the oldest operating jails in the state. The Sheriff was very vocal about the safety and security risks inherent in operating out of the old building and was successful in advocating for the new facility.

<sup>34</sup> DRI photo of the new Fremont County Jail, see above.

<sup>35</sup> Calculated from data received by jail inspector and site visit confirmation. Please note the Polk County Jail was excluded from the bed count average as an extreme outlier.

<sup>36</sup> Allamakee County relies on voters for help in building new jail, KWWL News (Oct. 5 2014), available at <http://www.kwwl.com/story/26709181/2014/10/05/allamakee-county-relies-on-voters-for-help-in-building-new-jail>.

<sup>37</sup> Photo Credit: Shive Hattery Architecture and Engineering, available at <http://www.shive-hattery.com/Projects/Justice/Project/Polk-County-Jail.aspx>.

<sup>38</sup> Photo by Liz Marten/The Gazette, appeared in Gregg Hennigan's article "Tours meant to build support for new Johnson County Jail" THE GAZETTE, Mar. 21, 2014, available at <http://thegazette.com/2012/08/13/tours-meant-to-build-support-for-new-johnson-county-jail>.

<sup>39</sup> Dallas County taxpayers have rejected three bond referendums aimed at improving the jail. See *16.8 million dollar bond referendum rejected; Sheriff disappointed*, KCCI News, Aug. 6 2015, available at <http://www.kcci.com/news/168-million-bond-referendum-rejected-sheriff-disappointed/34586470>. Johnson County has requested support from taxpayers several times without success, see *Johnson County voters again say no to courthouse bond*, KWWL News, Nov. 4 2014, available at <http://www.kwwl.com/story/27274069/2014/11/04/johnson-county-voters-again-say-no-to-courthouse-bond>.

<sup>40</sup> *After Failed Vote, What's Next for Dallas County Jail?*, WHOTV News, August 5, 2015, available at <http://whotv.com/2015/08/05/after-failed-vote-whats-next-for-dallas-county-jail/>.

<sup>41</sup> Going, Going, Gone, *supra* note 8, at 9.

<sup>42</sup> Photo credit: Unnamed and uncredited digital image appearing in: *What is a Body Wrap Restraint Device?* PATROLOG, June 29, 2010, available at <http://www.patrol-log.com/2010/06/29/what-is-a-body-wrap-restraint-high-tech-hog-tie/>.

<sup>43</sup> Photo credit: Tom Jackman (photographer), Unnamed digital image appearing in: *Report Confirms That Police Killed Natasha McKenna With Her Hands Cuffed And Legs Shackled*, THE WASHINGTON POST, Apr. 22, 2015.

<sup>44</sup> Photo credit: *Five Point Restraints*, SAN FRANCISCO BAY VIEW, Dec. 2, 2014, available at <http://sfbayview.com/2014/12/16-hours-in-the-torture-chamber/five-point-restraints/>.

<sup>45</sup> IOWA ADMIN. CODE §201—50.13(2)(f).

<sup>46</sup> IOWA ADMIN. CODE §201—50.16(7).

<sup>47</sup> See *Divers v. Dep't of Corrections*, 921 F.2d 191, 194 (8<sup>th</sup> Cir. 1990).

<sup>48</sup> Photo credit: <http://www.alliedconst.com/desmoines-projects-colorinc-project3.html>.

<sup>49</sup> IOWA ADMIN. CODE §501—9.2(1).

<sup>50</sup> Last Resort, *supra* note 23.

<sup>51</sup> For more information on John Doe's story see Tony Leys, *One Mentally Ill Man's Horror Story*, DES MOINES REGISTER, July 8, 2013.

<sup>52</sup> See Andra Medea, M.A., *De-Escalating the Individual in Crisis: The Virtual Tranquilizer for First Responders and Criminal Justice Personnel*, more information available at <http://c3d.co/c3/about-us/>.

<sup>53</sup> Photo credit: <http://www.careaboutyou.info/wp-content/uploads/2015/02/cau-image-3.jpg>.

<sup>54</sup> Jay M. Pomerantz, MD, *Treatment of Mentally Ill in Prisons and Jails: Follow-up Care Needed*, MEDSCAPE, available at <http://www.medscape.com/viewarticle/458600>.

<sup>55</sup> *Farmer v. Brennan*, 511 U.S. 825, 832 (1994); see also *Bowring v. Godwin*, 551 F.2d 44, 47 (4<sup>th</sup> Cir. 1977).

<sup>56</sup> *Estelle v. Gamble*, 429 U.S. 97, 104 (1976) and IOWA ADMIN. CODE §201—50.15.

<sup>57</sup> *Brown v. Johnson*, 387 F.3d 1344, 1350—52 (11<sup>th</sup> Cir. 2004) and IOWA ADMIN. CODE §201—50.15.

<sup>58</sup> *Vaughan v. Lacey*, 49 F.3d 1344, 1345—46 (8<sup>th</sup> Cir. 1995).

<sup>59</sup> See *Estelle v. Gamble*, at 102.

<sup>60</sup> David Crary, *There's A Serious Shortage of Psychiatrists In The U.S.*, HUFFINGTON POST, Sept. 8, 2015, available at [http://www.huffingtonpost.com/entry/theres-a-serious-shortage-of-psychiatrists-in-the-us\\_55eef13ce4b093be51bc128f](http://www.huffingtonpost.com/entry/theres-a-serious-shortage-of-psychiatrists-in-the-us_55eef13ce4b093be51bc128f).

<sup>61</sup> Chelsea Keenan, *Iowa faces shortage in psychiatrists, and resolving the problem won't be easy*, THE GAZETTE, Mar. 8, 2015, available at <http://www.thegazette.com/subject/news/iowa-faces-shortage-in-psychiatrists-and-resolving-the-problem-wont-be-easy-20150308>.

<sup>62</sup> IOWA ADMIN. CODE §201—50.15(6)(d).

<sup>63</sup> See *Phillips v. Jasper Co.*, 437 F.3d 791, 795 (8<sup>th</sup> Cir. 2016).

<sup>64</sup> Donna J. Miller, *Sean Levert, denied medication, hallucinated for hours before he died in jail*, THE PLAIN DEALER, Nov. 11, 2008, available at [http://blog.cleveland.com/metro/2008/11/post\\_15.html](http://blog.cleveland.com/metro/2008/11/post_15.html).

<sup>65</sup> *Id.*

<sup>66</sup> *County approves \$3.375 million payment to settle Levert lawsuit*, THE PLAIN DEALER, Nov. 18, 2010, available at [http://blog.cleveland.com/metro/2010/11/county\\_approves\\_375\\_million\\_pa.html](http://blog.cleveland.com/metro/2010/11/county_approves_375_million_pa.html); see also <http://www.gbfirm.com/4-million-jail-death-settlement-largest-in-ohio-reforms-to-follow/>.

<sup>67</sup> IOWA ADMIN. CODE §201— 50.15(7)(d).

<sup>68</sup> *Vaughan v. Lacey*, 49 F.3d 1344, 1345–46 (8<sup>th</sup> Cir. 1995).

<sup>69</sup> *Hartsfield v. Colburn*, 371 F.3d 454, 457 (8<sup>th</sup> Cir. 2004)(holding that withholding treatment for a prisoner for disciplinary reasons raises a factual issue as to deliberate indifference to a prisoner's serious medical need).

<sup>70</sup> *Your Right to Adequate Medical Care*, A Jailhouse Lawyers' Manual, Columbia Human Rights Law Review (2009); Rosado v. Alameida, 349 F.Supp. 2d 1340, 1344–45 (S.D. Cal. 2004).

<sup>71</sup> IOWA ADMIN. CODE §201—50.15(1).

<sup>72</sup> The Iowa Department of Human Services "Medicaid Provider General Program Policies" indicate that when a person is incarcerated, they are no longer covered for payment for services provided: "Payment will not be made for medical care and services that...are provided to a person while the person is an inmate of a non-medical public institution. A non-medical public institution includes, but is not limited to, jails, prisons, and juvenile detention centers." Iowa Department of Human Services, *Medicaid Provider General Program Policies, All providers I. General Program Policies*, 26 (June 1, 2016) available at <https://dhs.iowa.gov/sites/default/files/All-I.pdf>.

<sup>73</sup> Photo credit: Meltwater (photographer) (June 20, 2007). *Jail Cells (Open)* [digital image]. Retrieved from <https://www.flickr.com/photos/meltwater/578304919>.

<sup>74</sup> Justin Carmody, *Reentry for Safer Communities Effective County Practices in Jail to Community Transition Planning for Offenders with Mental Health and Substance Abuse Disorders*, NATIONAL ASSOCIATION OF COUNTIES AND THE DEP'T OF JUSTICE, BUREAU OF JUSTICE ASSISTANCE, 10 (Sep. 2008), available at <https://www.justice.gov/sites/default/files/testimonies/witnesses/attachments/2009/09/15/2009-09-15-ojp-leary-mental-illness.pdf>.

<sup>75</sup> Mark R. Munetz, M.D. Patricia A. Griffin, Ph.D., *Use of the Sequential Intercept Model as an Approach to Decriminalization of People With Serious Mental Illness*, PSYCHIATRY ONLINE (Apr. 2006) available at <http://ps.psychiatryonline.org/doi/full/10.1176/ps.2006.57.4.544>. See also SAMHSA's GAINS Center for Behavioral Health and Justice Transformation, available at <http://www.samhsa.gov/gains-center>.

<sup>76</sup> For a more detailed explanation and additional resources see: Jessica Peckover, *Jail Diversion in Iowa*, THE IOWA COUNTY (Feb. 2016) [hereafter *Jail Diversion in Iowa*] available at [http://www.iowacounties.org/wp-content/uploads/2016/02/64578\\_IACty-February2016\\_SP\\_OPT.pdf](http://www.iowacounties.org/wp-content/uploads/2016/02/64578_IACty-February2016_SP_OPT.pdf).

<sup>77</sup> Frontline, *The New Asylums, Some Frequently Asked Questions* (May 2005) at <http://www.pbs.org/wgbh/pages/frontline/shows/asylums/etc/faqs.html>.

<sup>78</sup> See *Jail Diversion in Iowa*, *supra* note 76.

<sup>79</sup> Photo credit: Mental Health Association of Portland (March 20, 2014). *CIT Encounter* [digital image]. Retrieved from <http://www.mentalhealthportland.org/spokane-looks-to-portland-for-ways-for-police-to-handle-crisis/>.

<sup>80</sup> Lee Hermiston, *Johnson County to offer Crisis Intervention Training next March*, THE GAZETTE, May 25, 2016, available at <http://www.thegazette.com/subject/news/public-safety/johnson-county/johnson-county-to-offer-crisis-intervention-training-next-march-20160525>; See also *Jail Diversion in Iowa*, *supra* note 76.

<sup>81</sup> Photo credit: Tony Leys, included in article: Tony Leys, *Mental health programs shifting to Broadlawns*, DES MOINES REGISTER, July 18, 2016, [hereafter *Mental Health Programs Shifting*] available at <http://www.usatoday.com/story/news/health/2016/07/18/mental-health-programs-shifting-to-broadlawns/87263636/>.

<sup>82</sup> See *Mental Health Programs Shifting*, *supra* note 81.

<sup>83</sup> See *Jail Diversion in Iowa*, *supra* note 76.

<sup>84</sup> infoNET, *Senate Judiciary Committee Joins Call for Action on Mental Health*, undated, available at <http://www.infonetiaowa.org/news/votes/28-senate-judiciary-committee-joins-ca/>.

<sup>85</sup> See *Jail Diversion in Iowa*, *supra* note 76. Additional info obtained in interviews with Regional staff.

<sup>86</sup> Stephanie Gruber-Miller, *'Access center' jail diversion campus takes shape*, THE GAZETTE, Sep. 28, 2016, available at <http://www.press-citizen.com/story/news/2016/09/28/access-center-jail-diversion-campus-takes-shape/91214692/>.

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<sup>87</sup> Known counties operating post-booking jail diversion programs as of 10/14/2016: Black Hawk, Dubuque, Johnson, Iowa, Linn, Polk, Scott, Appanoose, Davis, Wapello, Mahaska, Lee, Des Moines, Henry, Jefferson, Keokuk, Louisa, Washington, Van Buren, Story, Woodbury, Cass, Fremont, Harrison, Mills, Monona, Montgomery, Page, Pottawattamie, Shelby, Calhoun, Sac, Crawford, Buena Vista, Ida, Carroll, Hamilton, Boone, Hardin, and Franklin.

<sup>88</sup> Based on information given in interviews with MHDS Regional staff, or data included in current budget documents, the following mental health regions are providing jail diversion as a core plus service: Central Iowa Community Services, County Social Services, Heart of Iowa, Mental Health and Disability Services of the East Central Region, Polk County Health Services, Rolling Hills Community Services, Sioux Rivers Mental Health and Disability Services, South Central Behavioral Health Region, Southwest Iowa MHDS Region.

<sup>89</sup> Photo credit: Unity Point Health Trinity, *Local provider UnityPoint Health® - Robert Young Center awarded \$3.1 million contract to manage crisis behavioral health services in five eastern Iowa counties*, Jan. 25, 2016, available at <https://www.unitypoint.org/quadcities/article.aspx?id=b6a7828a-d0a4-448b-b375-f938e8603c03>.

<sup>90</sup> Photo credit: Mark Mahan (photographer) (Jan. 23, 2016). Retrieved from <http://www.kentucky.com/news/local/counties/fayette-county/article52819710.html>.

<sup>91</sup> Derrick Sullivan, *Mental Health Court marks successful first year*, THE DAILY NONPAREIL, Dec. 26, 2015, available at [http://www.nonpareilonline.com/news/local/mental-health-court-marks-successful-first-year/article\\_13609838-be9d-5646-8f60-1079c537974a.html](http://www.nonpareilonline.com/news/local/mental-health-court-marks-successful-first-year/article_13609838-be9d-5646-8f60-1079c537974a.html).

<sup>92</sup> *Southwest Iowa MHDS Region Mental Health and Disability Services Management Plan Annual Service and Budget Plan FY16/17*, available at <https://dhs.iowa.gov/sites/default/files/15-SW-IA-FY17-ASBP.pdf>.

<sup>93</sup> Iowa Code §229 (2016).

<sup>94</sup> Doris J. James and Lauren E. Glaze, *Mental Health Problems of Prison and Jail Inmates*, Dep't of Justice Bureau of Justice Statistics (Rev. Dec. 2006) available at <http://www.bjs.gov/content/pub/pdf/mhppji.pdf>.